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by Abdullah Alaoudh



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by Abdullah Alaoudh*

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Abstract

This article discusses the features of “religious institutions” in the pre-modern Hanbali context. As we will see, the religious institutions were somewhat like the “imagined communities” that Benedict Anderson describes in his seminal work. Most religious movements and productions are not directly traceable to formally organized institutions and even when such institutions happened to exist, their function was usually unrelated to the religious work, or to religious intellectual activities as a whole, or in any case less relevant than the broader sphere of jurists. This sphere is discussed in the context of the clergy in the Sunni and Hanbali experience, where hierarchy and institutionalization were rarely operative. The article ends with the debate of whether ulama, namely the Hanbalis, represented a “corporate group.” Different studies adopt different approaches to determine whether ulama and jurists have established the type of solidarity that would qualify them as a corporate group. I argue that, although many jurists were members of such corporate groups, not all of them were. The general juristic sphere encompassed many who were members neither of a corporate group or even of a madhhab. This feature of free-floating juristic sphere allowed jurists to protect their domain from both internal and external controls.

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I. Introduction

This article discusses several features of “religious institutions” in the pre-modern Islamic context focusing on the Hanbali jurisprudential school (*madhab*) from the establishment of this *madhab* in around 850 by its founder, Ahmed Bin Hanbal, until around 1350. As will be seen, the religious institutions of the time were somewhat akin to the “imagined communities” that Benedict Anderson describes in his seminal work.¹ They comprised imagined institutions because most religious movements and productions did not issue from formally organized institutions and even where such institutions did exist, their purpose was usually unrelated to religious work or religious intellectual activities broadly understood, or in any case were less relevant than the broader sphere of jurists. The “clergy” in the Sunni Muslim experience, to the extent it existed, was rarely hierarchical or formally institutionalized. The article therefore contributes to the debate over whether the *ulama*, namely Hanbalis, comprised a “corporate group.” Different studies have adopted different approaches to determine whether Islamic scholars (*ulama*) and Islamic jurists (*fuqaha*, sing. *faqeeh*) ever possessed an established sense of solidarity that would qualify them as a corporate group.

One traditional orientalist debate focused on the question of whether the *ulama* had failed to institutionalize their religious authority and therefore were responsible for the lack of an organized corporate group. At the same time, others ask whether these jurists were ever able to really act in virtue of a common self-identity as *ulama* and thus constitute an institutionalized corporate group.²

Both approaches were dominated by the orientalist presumption that institutionalization is synonymous with progress and leverage. They presume that the lack of dominant corporate groups and completely institutionalized *ulama* are failures. Through the example of Hanbalis, one of the four prevalent *madhabs* in Islamic jurisprudence (covering the *madhab*’s first five centuries), I argue that, although some corporate groups existed, the most important feature of jurists in general is the imagined sphere that delimits membership. There is no such organized institution that gathers the whole of the different Hanbali and non-Hanbali jurists, and scholars in one comprehensive group or rigidly classifies the jurists into corporate subgroups. But rather than seeing this as evidence of some failure by the Hanbali *ulama* to consolidate their group identity and mission, I understand it as evidence of the *ulama*’s intentional resistance to persistent efforts of institutionalization in order to maintain their *sphere*. Allowing them to be consolidated into a *group* may have offered unity but it would also make them susceptible to external controls as well as the internal threat that one particular interpretation of religious meaning would be adopted, pushing out all others.

I will focus on the Hanbali “clergy,” some of whose juristic features persist and can arguably represent different jurists throughout Islamic history and probably even today. It is worth noting that not all practices of the Hanbalis could be generalized or were present everywhere throughout the Hanbali experience. Examining certain of these features, however, will enhance our understanding of the juristic work and draw attention to possible similarities with other schools and times. Most importantly, examining these features of Hanblai *ulama* in the past opens the way to a new understanding of other Islamic jurists, including some contemporary ones who are trained in

¹ ANDERSON BENEDICT, *Imagined communities: Reflections on the origin and spread of nationalism*, Verso 2006, at 1-9. See also TAYLOR GEORGE, *Modern social imaginaries*, Duke 2004, at 23-31.

² See e.g. MAKDISI GEORGE, *Guilds of Law in Medieval Legal History: An Inquiry into the Origins of the Inns of Court*, Clev. St. L. Rev. 34 (1985), at 10; EPHRAT DAPHNA, *A Learned Society in a Period of Transition: The Sunni _ulama_ of Eleventh Century Baghdad*, SUNY Press. 2000, at 143; KEDDIE NIKKI, *Scholars, Saints, and Sufis: Muslim Religious Institutions in the Middle East Since 1500*, Univ of California Press. 1972, at 2.

classical jurisprudence. Taking different examples from different times and schools could reveal that Islamic jurists share more in common than we suspect. By presenting the formation of Islamic scholars, I will test the dispersed nature of these scholars and how they self-conceived their tasks and roles. Then, I will apply the non-corporate features to the political field to examine how their features affected their activism, withdrawal, and political mode in general. In the last section, I will give the example of modern *ulama* during the Tanzimat period to demonstrate that powerful features of the dispersed authority of the imagined religious institutions still exist.

II. “Clergy” in Islam and the “Religious Institution”

It is important to define what we mean by religious institutions and scholars (*ulama*). Our understanding of the term “religious institution” affects our appraisal of the roles, the nature, and our discernment of the decrease or increase in the presence and influence of that institution. Epistemological presuppositions regarding the characteristics of “religious institutions” have influenced the literature in a powerful, and in my view negative, way.³ Western writers have approached the issue of “religious institution” with presuppositions that reflect the historical experience of Western Christendom—its understanding of the religious sphere and operations—rather than those of Muslim cultures.⁴

At the same time, the phrase “religious institutions” as applied to Islamic history may prove misleading for two reasons. First, and most importantly, most of the work and literature produced by Islamic jurists and *ulama* did not take place in any formal “religious institution” as we understand the concept today. Many scholars who have enriched the judicial and religious literature with their contributions can hardly be linked to an actual, identifiable institution. Books, *fatwas*, and responses of Islamic scholars are religious works, but the religious community is not a religious institution nor is it mainly composed of religious institutions unless we use “religious institution” in an imagined, metaphorical sense.⁵ Even keeping this metaphorical and imagined institutional status in mind, the individual qualities of the scholar and his work almost always matter more than the aspects of self-identity that are determined by their pertaining to a given imagined school, as we will see was the case in the ranks of Hanbali *ulama* across five centuries.

The second pitfall of the term “religious institutions” from the point of view of the community described as such involves a large segment of the community that has reservations about the deep Christian heritage associated with the phrase. According to a number of influential contemporary Muslim scholars, the term “religious institution” possesses a connotation related to the Christian context in which it arose, a connotation that contaminates its understanding in the Islamic context.⁶

³ For the idea of epistemological conflict between two cultural narratives and their powerful influence on our understanding and consciousness see MACINTYRE ALISDAIR, *Epistemological Crises, Dramatic Narrative and The Philosophy of Science*, The Monist 1977, at 60.

⁴ The researcher HUSSEIN AGRAMA noted the predicament of the presuppositions of Western studies that analyze the Islamic thought as a “problem” to be explained and then solved. This predicament happened because the Western standards and narrative were so powerful, and then shaped the presupposition about how religion operates in society. I may add here that the Western narrative shaped how we (and they) understand Islamic works by reducing them to “religious institutions” that dominated Christian literature and experience. See ALI AGRAMA HUSSEIN, *Questioning secularism: Islam, sovereignty, and the rule of law in modern Egypt*, University of Chicago Press 2012, at 1-42.

⁵ This nature of Islamic jurisprudence is going to be discussed from another aspect, the (lack of) corporate group.

⁶ See e.g. AL-QARADAWI YOUSEF, *Al-Islam wa al-'Almanyyah Wajhan li Wajh*, Maktabat Wahbah 1987, at 45; AL-HAWALI SAFAR, *Al-'almanyyah*, Dar al-Hijrah 1982, at 65-108; IMARAH MUHAMMAD, *Al-Islam wa Al-Syasah*, Al-Shorouk International 1992, at 28-9-70. This book is important because it was first published by the Center of Research in al-Azhar, and is prefaced by then-al-Azhar's Grand Sheikh: Jad al-Haqq who asserts in his preface that there is no sacred religious institutions in Islam.

The vast majority of commentators, writers, and scholars in Islamic studies,⁷ especially Sunni ones, assert that there is no clergy in Islam, where “clergy” is to be understood as hierarchal and representative of the sacred.⁸ Although at different points in history there were clerical traditions or practices that were justified by different methods in Islamic jurisprudence and thought, these practices never formed a pattern or marked any divergence from the mainstream practice which was of a decidedly non-clerical nature.⁹

The “religious community” whose Western counterpart would be described as a “religious institution” presents itself in the Muslim world as, for example, “scholars” (*ulama*) and jurists (*fuqaha*) more than “institutions” or establishments. For example, the self-presentation and self-image of the Hanbali scholarly community identifies them as scholars, jurists, authors, jurisconsults, and so on.¹⁰ Therefore, the whole group of *ulama* as conceived by the *ulama* themselves is therefore somewhat comparable to the concept of “*ummah*” (Islamic nation) in the sense that it is not a physically identified distinct identity, institution, or group, separate and classified.¹¹ Rather, the *ulama* as “imagined institution,” I would say, is a combination of organized institutions and religious scholars who may or may not be affiliated with formal or even jurisprudential institutions known as “*madhabs*.”¹² And even if most Hanbali scholars were affiliated to a fixed institution at some point, they acted as independent scholars whose authority derived from their scholastic aptitude more than from institutional affiliation. This is why, for example, they were much more invested in the imagined school of jurisprudence than the formally established schools of their times, as we will see in the next section.¹³

Reducing the scope of religious authority to the role attributed to it in the scholarly literature on formal institutions leaves out rich historical debates and factors and, thus, makes the attempt to provide a normatively acceptable understanding of the clerics’ proper role unrealistic. This is not to say that formal institutions were not established or that they failed to affect Islamic jurisprudence. However, these formal Islamic “institutions” were inherently more fluid, dispersed, and horizontal to such an extent that they, for the most part, could not even be called institutions in the Western sense of the term. Hanbali jurists flow in and out of them, and their behavior tends to be that of individuals accountable only to themselves, often attached to a school of thought in an imagined sense that does not imply any sort of institutional loyalty or obligations to the school or institution. Portraying official religious establishments as monolithic representations of religious institutions in Islamic jurisprudence neglects a wide range of influential and sometimes more important segments

⁷ See for e.g. AL-MAWDUDI ABU AL-'ALA, *Nazarayyat al-Islam al-Syasyah*, Dar al-Fikr. 1967, at 30; AL-QARADAWI, *supra* n. 6, at 36; al-HAWALI, *supra* n. 6, at 65-108; IMARAH, *supra* n. 6, at 28-9,50-123. See also BROWN CARL, *Religion and State, The Muslim Approach to Politics*. New York 2000, at 32. Brown clearly distinguishes between the Church-based system and clergy in Western experience on the one hand and Islamic State and governance on the other in the idea that Islam in its traditional approach does not separate religion from state but meanwhile does not have the (Christian) clergy in its history.

⁸ See BROWN, *supra* n. 7, at 32.

⁹ HATINA MEIR, 'Ulama', *Politics, and the Public Sphere: an Egyptian Perspective*, Utah 2010, at 2; EPHRAT, *supra* n. 2, at 96. For the Christian clergy in the West, see e.g. JELEN TED, *The political world of the clergy*, Praeger 1993, at 23. Jelen here cited a clerk who specifies his job as to represent the sacred.

¹⁰ In later examples of the other non-institutionalized Muslim scholarly communities see KEDDIE, *supra* n. 2, at 149; EPHRAT, *supra* n. 2, at 10-14.

¹¹ See in general ANDERSON, *supra* n. 1; Taylor, EPHRAT, *supra* n. 2.

¹² See HATINA, , *supra* n. 9, at 2; EPHRAT, *supra* n. 2, at 96.

¹³ MAKDISI differentiated between the schools of law “*madhab*” and colleges of law “*madrasas/institution*.” See, MAKDISI GEORGE, *The Rise of Colleges. Institutions of Learning in Islam and the West*, Eric 1981, at 1. It is noteworthy when Imarah in the book prefaced by the Sheikh of al-Azhar, and Abdul-razzaq al-Sanhouri, used the phrase “the Muslim nation with its *scholars and civil institutions*.” (Emphasis is mine). He distinguished between Muslim *scholars* and *civil* institutions instead of, say, “religious institutions” and “civil institutions.” IMARAH, *supra* n. 6, at 56.

of the religious community. As a result, any attempt to determine whether the power or authority of religious institutions in Muslim countries at any historical point decreased or increased will depend on the how the term “religious institution” is understood and applied to the community in question.¹⁴

Let us now take up the case of Hanbali *fuqaha* and *ulama* in order to discuss the idea of guilds and imagined institutions focusing on a very important period of the Hanbali school—the period running from its establishment (850) by Ibn Hanbal to around five centuries later (1350).

1. The Ranks of Hanbalis (850-1350)

Hanbalis refers to the *fuqaha* trained in the jurisprudential school of Ahmed bin Hanbal (d. 855), the founder and the main articulator of that *madhab*. The Hanbali *madhab* is one of the four principal Sunni schools that dominated the literature of Islamic jurisprudence. The Hanbali jurisprudence was established by Ibn Hanbal in around 850. It was propagated within learning circles by books of the founder and later those of his followers and adherents. Hanbali thought enjoyed a period of robust momentum during its early years which gradually dissipated until about two centuries later when it was revived by the Judge Abu Ya’la (d. 1066), who is probably the second most important figure in the Hanbali traditions.¹⁵

After the death of Abu Ya’la, his son Abu al-Husain Mohammed (Ibn Abi Ya’la, d. 1131) decided to document the jurisprudential biographies of Hanbali figures, compiling and classifying them into ranks (*tabqat*). His book can be translated as “the Ranks of Hanbali Jurists.” Each rank represents a generation of scholars going back to the establishment of the Hanbali jurisprudence. Two centuries after the death of Abi Ya’la, another well-known jurist, Ibn Rajab (d. 1393), resumed the jurisprudential biographical work, covering the ranks of Hanbalis from Abi Ya’la’s time until his own. Ibn Rajab’s work can be translated as “the Supplement of the Ranks of Hanbali Jurists.”

The two books, “the Ranks” by Ibn Abi Ya’la and “the Supplement” by Ibn Rajab are both important works for understanding the jurisprudential works and institutions of the Hanbali *madhab*. They provide a survey of the Hanbalis from the establishment of the Hanbali jurisprudence (850) until five centuries later (1350). Each Hanbali jurist belongs to a rank that generally lasts between twenty to forty years.¹⁶ The authors start each biography with a simple introduction of the date of birth and

¹⁴ As examples of analyses that suffer from this reductionist approach in a way or another, thus, concluded that scholars’ or religious institutions’ influence in the Muslim world decreased, see HAMILTON ALEXANDER ROSSKEEN GIBB/HAROLD BOWEN, *Islamic Society and the West: Islamic society in the eighteenth century*, Oxford University Press 1957, at 2:112-3. BERNARD LEWIS, *Islam in history*, Alcove Press. 1973, at 4; KEDDIE, *supra* n. 2, at 149-167. Compare in general, ZEGHAL MALIKA, *Religion and Politics in Egypt: The Ulema of al-Azhar, Radical Islam, and the State (1952–94)*, 31 *International Journal of Middle East Studies*, 371(1999); ZAMAN MUHAMMAD QASIM, *The Ulama in Contemporary Islam: Custodians of Change: Custodians of Change*, Princeton University Press (2010), at 1-17; HATINA, *supra* n. 9, at 9; SHADAAB H RAHEMTULLA, *Reconceptualizing the Contemporary Ulama: Al-Azhar, Lay Islam, and the Egyptian State in the Late Twentieth Century*, Simon Fraser University 2007, at 1.

¹⁵ IBN ABI YA’LA, *Tabaqat al-Hanabilah*, Dar al-Kutub al-Ilmiyyah 1996, at 1:73-133; ABU ZUHRAH MOHAMMAD, *Ahmed Bin Hanbal*, Dar al-Fikr al-‘Arabi, at 139-463; SCHACHT JOSEPH, *An Introduction to Islamic Law*, Clarendon 1964, at 63-6; WAEEL B HALLAQ, *An Introduction to Islamic Law*, Cambridge University Press 2009, at 31-8; MELCHERT CHRISTOPHER, *Ahmad ibn Hanbal*, Oneworld Publications 2012, at 59-82. There was an early debate whether Ibn Hanbal was a jurist at all. For example, IBN JAREER AL-TABARI in 922 A.C. argued that Ibn Hanbal was just an authentic narrator of the Prophet’s traditions, a position known as “*muhaddith*” instead of jurist, faqeeh. Ibn Jareer paid a harsh toll on this opinion. In 922 A.C., the followers of Ibn Hanbal in Baghdad attacked him, threw rocks at him until he died or probably was killed. BIN AL-WARDI OMAR, *Tatimmat al-Mukhtasar fi Akhbar al-Bashar (Tarikh Ibn al-Waerdi)*, Dar al-Kutub al-Ilmiyyah 1996, at 1-248-9.

¹⁶ For the ranks (or layers, as FRANZ ROSENTHAL translated the word “*Tabqat*”), ROSENTHAL notes that dividing Muslim biographies into figures is an authentic Islamic approach to historiography. It started with the first generation of the Prophet’s companions (Peace Be Upon Him). According to him, some Muslim medieval historians choose twenty years for a rank, while

place and a list of teachers and instructors. Then, Ibn Abi Ya'la and Ibn Rajab narrate the main events of the life of the jurist, and how they contributed to the Hanbali jurisprudence. Usually, the two authors end each biography with notable jurisprudential opinions and selections (*ikhtiarat*) by that jurist. Reading the texts, one notices figures who are more influential in the Hanbali jurisprudence than others—those individuals whose authority is considered sufficient to establish a new interpretation of the Hanbali jurisprudence to be followed by adherents of the school. Examples of these influential include al-Khallal (d. 923), al-Barbahari (d. 940), al-Khiraqi (d. 954), al-Harawi (1089), and Ibn Hubairah (d. 1165).¹⁷

In the following sections, I will discuss the Hanbali mode—juristic features that persist and describe different judicial practices throughout Islamic history and probably even today. It would be inaccurate to generalize and project practices that existed at specific times and circumstances, yet a broad grasp of these features will enhance our understanding of the juristic work, and draw our attention to the possibility of similar features in other schools and times. Ideally, these features of the past Hanblai would lead us to a fuller understanding of other Islamic jurists, some even contemporary, whose outlook and orientation largely follows the structures of classical Islamic jurisprudence.

2. The *Ulama* as Corporate Group

If indeed neither “clergy” nor “religious institutions,” as they are understood in the West, existed in analogical form in the Islamic mainstream or at least did not have a central role in the religious life of the community could other corporate groups have existed and exerted influence? In this section, I will review some important ideas from the literature on this subject, and by taking the Hanbali example, I will conclude that some corporate groups or guilds did indeed exist in the Islamic context. The most important defining feature of such groups, however, is the existence of a sphere that encompasses both corporate and non-corporate groups. Other than the existence of the juristic sphere, there was no such organized institution that gathered the different jurists, scholars, and institutions into a single comprehensive corporate group or established a corporate relationship between all the bodies of religious scholars. For those reasons, I argue that corporate relationships were at most secondary in the religious juristic sphere.

Following Louis Massignon valuation of the importance of “guilds” in Islamic history,¹⁸ George Makdisi went one step further by applying the concept not only to formal schools and associations of artisans in medieval Islam but also to jurisprudential schools (*madhabs*).¹⁹ Sherman Jackson, in turn, described the relationship of the jurist to the jurisprudential school (*madhab*) in terms of “corporate status” where “[e]ach school (*madhab*) acquires the ability to confer a measure of protection to its members by virtue of their membership in that particular group.”²⁰ Jackson, interestingly, likened the relationship between the individual jurist and the corporate group, the *madhab* in this case, to the

others extend it to forty years. However, a third group seems to fluctuate between the twenty and forty and stretch it sometimes more. The case of the two compilations here of the Ranks of Hanbalis and its Supplement seem to adopt the latter approach. See AL-IMAM MUSLIM AL-NAISABOURI, *al-Tabaqat*, Dar al-Hijrah 1st ed. 1991, at 33-8; ROSENTHAL, *A History of Muslim Historiography*, E. J. Brill. 1968, at 82-3.

¹⁷ IBN ABI YA'LA, *supra* n. 15, at 2:64, 16, 64; IBN RAJAB, *Dhail Tabaqat al-Hanabilah*, Dar al-Kutub al-'Ilmiyyah 1996, at 1:44 -211-38.

¹⁸ According to MAKDISI, Louis Massignon was the first who spoke of guilds in Islam in an article published in 1920. MAKDISI, *supra* n. 2, at 4.

¹⁹ MAKDISI, *supra* n. 13, at 1. See IBN ABI YA'LA, *supra* n. 15, at 1:73-133; ABU ZUHRRAH, *supra* n. 15, at 139-463; SCHACHT, *supra* n. 15, at 63-6 (1964); HALLAQ, *supra* n. 15, at 31-8; MELCHERT, *supra* n. 15, at 59-82.

²⁰ SHERMAN JACKSON, *Islamic Law and the State: the Constitutional Jurisprudence of Shihāb al-Dīn al-Qarāfī*, Brill 1996, at 72.

relationship between the *rajih* (weighted opinion) and the *mashhur* (predominant opinion) in Islamic jurisprudence. Both individual and weighted opinions could be substantively more valuable in term of jurisprudence, but the predominant opinion and corporate group usually exert more influence.²¹ As Daphna Ephrat concludes in her study of the Sunni *ulama* of the eleventh-century Baghdad in *A Learned Society in a Period of Transition*, affiliation with a *madhab*, at some point, lost the sense of “solidarity group” and became a formal, hollow bond.²² Although group solidarity had been established, the *ulama*, as a whole, never demonstrated serious commitment to it.²³

To test whether the Hanbalis can be considered a corporate group, I will first see whether membership in the group proffered its members protection. Ibn Abi Ya’la begins the series of Ranks of Hanbali by emphasizing a startling principle of Islam. He asserts that “the [doctrine] of loyalty and enmity is an innovation. Those who [think it is part of their faith to] say we are loyal to this person or a group and enemy to another [other than the general loyalty to Islam itself]” are religious innovators.²⁴ In other words, by just considering loyalty to a certain group as an innovation, the very idea of “by-virtue-of-their-membership” is rejected because what matters, according to one prominent narrator of Hanbali biographies and jurisprudence, are the principles and general doctrines of the *madhab*, not affiliation with any school or group.

On the other hand, in the *Ranks*, in telling the stories of Hanbalis, Ibn Abi Ya’la divides them into ranks and treats them as a group of people who have some affiliation to Hanbali jurisprudence and institutionalized benefits. For example, Abu Muhammed al-Barbahari, from the second rank of Hanbalis, is the “leader of the Hanbali community in his time,” and was “leading in fighting against the people of [religious] innovation,” according to Ibn Abi Ya’la.²⁵ He says that al-Barbahari “has a reputation at the ruler’s court and a prominence among our [Hanbali] people” and that he “was one of the well-versed distinguished leading scholars who memorized hadiths, are trustworthy, and faithful.”²⁶ Although al-Barbahari was a leader of the community, he acts mostly on the basis of principles against “people of religious innovation” whatever their affiliation. On the other hand, other Hanbali figures from different ranks, such as al-Khiraqi, Abduaziz Ghulam al-Zajaj, and Abu Abdullah Ibn Hamid were also described as “leaders of the Hanbalis” of their times which brings the issue of affiliation again.²⁷

Also of note is the ease with which affiliation can be changed, like in the case of Abi Ya’la, the father of the Ibn Abi Ya’la and one of the leading Hanbalis of all time. Abi Ya’la was introduced to the Hanbali jurisprudence by the above-mentioned Ibn Hamid. Abi Ya’la’s religious and legal education, which had begun by age ten, had followed the Hanafi madhab until he met Ibn Hamid, who inspired him and opened his eyes to the Hanbali jurisprudence.²⁸ The change reveals both the strong attraction of Hanbali jurisprudence and the competition among jurists to strengthen their jurisprudence and, at the same time, we can sense the relative strength of the individual relationships among jurists over institutional affiliations to the extent that jurists could change

²¹ JACKSON, *supra* n. 19, at 83. MAKDISI also presented the argument that schools were based on individuals so they did not establish “guilds”. MAKDISI, *supra* n. 2, at 10.

²² EPHRAT, *supra* n. 2, at 143.

²³ EPHRAT, *supra* n. 2, at 96.

²⁴ IBN ABI YA’LA, *supra* n. 15, at 1:37.

²⁵ IBN ABI YA’LA, *supra* n. 15, at 2:16.

²⁶ IBN ABI YA’LA, *supra* n. 15, at 2:16

²⁷ IBN ABI YA’LA, *supra* n. 15, at 2:64-143-5.

²⁸ IBN ABI YA’LA, *supra* n. 15, at 2:166-7.

madhab affiliation following an encounter with a charismatic learned scholar, as in the case of Ibn Hamid.²⁹

In the thirteenth and fourteenth centuries, the Hanbali school increasingly developed toward certain symbols and institutions. We start to notice a Hanbali “pulpit” from which one Hanbali once preached, “I am a Hanbali as much as I am alive, and when I die, my will for the people is to follow the Hanbali school.”³⁰ Another Hanbali taught a friend to respond when asked by God what he followed by simply saying “Ibn Hanbal.”³¹ We also notice that in addition to Hanbali schools (*madrasa*), the Hanbali learning circle (*halaqah*), the Hanbali section, the Hanbali leader, and the Hanbali endowments,³² a Hanbali niche devoted to prayers involving the Hanbali jurisprudence is mentioned more than three times.³³ Indeed there is even a Hanbali qadiship, about which Ibn Rajab complains because it is sometimes empty and no Hanbalis appear disposed to occupy it.³⁴

While *madrasas* can exclusively follow one jurisprudential school such as the Hanbali *madhab*, other *madrasas* existed that taught more than one jurisprudence.³⁵ Al-Mustansir Billah, for instance, established a *madrasa* in the 1230s, and assigned two principal supervisors to it: Abu al-Waleed al-Hanbali and Ibn al-Najjar al-Shafi'i.³⁶ In this *madrasa*, both jurisprudences were taught and both *madhabs* competed to gain followers among students and the learning community. In these *madrasas*, presenting the principles of jurisprudence mattered more than belonging to a particular *madhab*. The case of Muwaffaq al-Din Ibn Qudamah (d. 1223) is worth relating.

Ibn Qudamah was the leader of that Hanbalis at the great mosque of Damascus. According to Ibn Rajab, towards the end of his life, “he was the destination of every jurist regardless of *madhab*.”³⁷ Therefore, while Ibn Qudamah was the head of Hanbalis and one of the most influential Hanbalis of all times, he nonetheless taught jurists from other *madhabs* and his influence went beyond *madhab* affiliation or “membership.” Different well-known *ulama* recognized the high level of independent jurisprudential reasoning that Ibn Qudamah reached—a concept known as *Ijtihad*.³⁸ This is relevant for the purposes of this article because reaching such a level of *ijtihad* is considered reaching a point that goes beyond representing a sole *madhab* or jurisprudence. Ibn Rajab tells us that Ibn Qudamah “used every Friday to run a learning circle and, then afterwards, engage in an hour debate with opponents and dissenting jurists.”³⁹ Ibn Rajab mentions famous jurists from different backgrounds

²⁹ IBN ABI YA'LA, *supra* n. 15, at 2:16-7.

³⁰ IBN RAJAB, *supra* n. 17, at 1:44.

³¹ IBN RAJAB, *supra* n. 17, at 1:33.

³² IBN RAJAB, *supra* n. 17, at 2: 139, 152, 189, 227-243.

³³ IBN RAJAB, *supra* n. 17, at 2:137, 178-227.

³⁴ IBN RAJAB, *supra* n. 17, at 2: 178-189.

³⁵ IBN RAJAB, *supra* n. 17, at 2: 136.

³⁶ IBN RAJAB, *supra* n. 17, at 2:139.

³⁷ IBN RAJAB, *supra* n. 17, at 2: 63.

³⁸ IBN RAJAB, *supra* n. 17, at 2:63-6. For the classical discussions of *ijtihad* and its rulings and requirements, see the classical sources in the origins of jurisprudence e.g. AL-ZIRKESHI BADR AL-DEEN, al-Bahr al-Muheet, Dar al-Kutbi 1994, at 8:226-58; AL-GHAZALI ABU HAMID, al-Mustasfa, Islamic U of Medina 1995, at 4:10-129; AL-AAMIDI ALI BIN AHMED, al-Ihkam Fi Usul al-Ahkam, Al-Maktab al-Islami, at 4:162-221; ALJAWZEYYAH IBN QAYYEM, I'lam al-Muqe'een, Dar al-Kutub al-'Ailmayyah 1991, at 2:126-9; AL-SHATIBI IBRAHEEM, al-Muwafaqat, Dar Ibn al-Qayyem-Dar Ibn Affan 2003, at 5:41-58; AL-TUFI NAJM AL-DEEN SULAIMAN, Mukhtasar Sharh al-Rawdhah, Mu'assasat al-Risalah 1987, at 3:575-84; AL-SHUKANI MUHAMMED ALI, Irshad al-Fuhul Ila Tahqeeq 'Ilm al-Usul, Dar al-Salam 1998, at 2:713-54; AL-SHINQEETI, Al-Mudhakkirah Fi Usul al-Fiqh, n.a. 2001, at 369-74. In the orientalist literature, JOSEPH SCHACHT discussed the concept of “closing the door of *ijtihad*” that was introduced to the Islamic jurisprudential centuries after the development of the four main schools (Hanafi, Maliki, Shafi'i, and Hanbali) in Islamic jurisprudence. SCHACHT, *supra* n. 15, at 69. Compare with Wael Hallaq's critique of Schacht's approach in discussing *ijtihad* and “closing the door of *ijtihad*”, HALLAQ WAEL, Was the gate of *ijtihad* closed?, 16 International Journal Of Middle East Studies (1984), at 2.

³⁹ IBN RAJAB, *supra* n. 17, at 2:63.

and *madhabs* who would not issue Islamic *responsa* until having read Ibn Qudamah's works. Lastly, Ibn Rajab lists some of Ibn Qudamah's major opinions, as well as a selection of jurisprudential work by which Ibn Qudamah went beyond the school of Ibn Hanbal.⁴⁰

The case of Hanbalis, as presented by the accounts by Ibn Abi Ya'la and Ibn Rajab that span five centuries, clearly demonstrates the existence of corporate elements but, at the same time, corporate self-identity was also clearly limited and never attained enough strength to seriously affect Islamic jurisprudence on the whole. Perhaps the bonds of affiliation were too loose, or maybe the jurists are to be blamed for failing to construe a community tied by solidarity. Or, on the other hand as I argue, perhaps a conscious decision was made to eschew an authoritative group identity to protect that community from domination or total political control. In the modern Western literature, debate continues to examine whether, from the fifteenth century onwards, *ulama* in general maintained a robust, continuous corporate nature.

In the work *Scholars, Saints, and Sufis*, different academics discuss religious institutions in Islam from the fifteenth century on. One theme that runs throughout the book is the reading of *ulama* as a "corporate group." Unlike Massignon, Makdisi, and Jackson, the researchers Nikki Keddie (editor),⁴¹ Afaf Lutfi al-Sayyid Marsot,⁴² Edmund Burke III,⁴³ Daniel Crecelius,⁴⁴ and Aziz Ahmed⁴⁵ argue that the *ulama* do not consistently act as a "corporate group."⁴⁶ Marsot complains that the (high) *ulama* in the eighteenth century did not act as a corporate group and did not perform specific state functions and, therefore, failed to achieve much influence.⁴⁷ A counterexample is found in Leon Carl Brown's account of nineteenth-century Tunisia, where the *ulama* are seen to have a sense of a "corporate entity separating themselves from the government,"⁴⁸ but this example seems rather exceptional.⁴⁹

Much more common are assertions such as that of Edmund Burke III who notes that until 1900, "[n]ot only was there no religious institution, *per se*, in Morocco in the sense that there was no separate bureaucratic hierarchy of religious officials controlled from the top, it is even possible to say that *ulama* as an identifiable corporate group did not exist in Morocco."⁵⁰ Aziz Ahmed, describing the *ulama* of Pakistan, notes that in 1950s and 1960 their activity decreased dramatically because they were making individual efforts, not collective ones, to exert influence.⁵¹ An operative presupposition of these researchers is that the *ulama* should have behaved as a corporate group in order to capitalize on the group's social status, so they are consequently criticized by the researchers for having lacked the quality of corporate solidarity.

In fact, the lack of corporate identity and belonging in the *ulama*'s functions and roles in these cases and that of the Hanbalis might have more to do with the nature of their role as dispersed groups

⁴⁰ IBN RAJAB, *supra* n. 17, at 2:63.

⁴¹ KEDDIE, *supra* n. 2, at 2.

⁴² KEDDIE, *supra* n. 2, at 146-150.

⁴³ KEDDIE, *supra* n. 2, at 101-6.

⁴⁴ KEDDIE, *supra* n. 2, at 180-1.

⁴⁵ KEDDIE, *supra* n. 2, at 264.

⁴⁶ Compare in the same book the work of Brown in KEDDIE, *supra* n. 2, at 146-150.

⁴⁷ KEDDIE, *supra* n. 2, at 146.

⁴⁸ The use of the phrase "corporate entity" here looks to suggest "autonomy" more than real "corporate group."

⁴⁹ BROWN LEON CARL, The Religious Establishment in Husainid Tunisia, in *Scholars, Saints, and Sufis: Muslim Religious Institutions in the Middle east since 1500* (Nikki R Keddie ed. 1972), at 73-4.

⁵⁰ BURKE III EDMUND, The Moroccan Ulama, 1860-1912: An Introduction, see KEDDIE, *supra* n. 2, at 101.

⁵¹ AHMAD AZIZ, Activism of the Ulama in Pakistan, in *scholars, saints, and sufis: Muslim Religious Institutions in the Middle east since 1500* (Nikki R Keddie ed. 1972), at 264.

who are not organized into formal institutions or unified guilds.⁵² This is why describing their operation as an imagined institution acting within a certain social sphere is more accurate than describing them as a corporate institution because, even when they formed corporate-like institutions, their power derived from their status as *ulama*—an imagined institution—rather than from their formal association with another institution. Miriam Hoexter puts it much better than I: “*ulama* were not acting as a concentrated group. They were hardly a “group” in the sociological meaning of the term. It was the expertise of the Sharia that gave them authority not their membership to a specific group.”⁵³

Thus, as Ephrat explains, the fluid and flexible label of *ulama* is what confers legitimacy despite the lack of official institutions and corporations.⁵⁴ Moreover, we should not be surprised to see fragmentation of authority among contemporary Sunni scholars because such dispersion comes from the nature of the religion itself, at least according to one renowned commentator.⁵⁵ Wael Hallaq has taken the extreme position of denouncing the whole idea of corporate personhood as being immoral and against Islamic law.⁵⁶ What seems more accurate is that Islamic law does not contemplate or recognize a total dominance of corporate groups for Islamic scholars as a class, whose unifying function is the honorable one of interpreting Sharia. At the same time, the existence of corporate groups within the scholars as a class did help to perpetuate their work to the extent that they remained independent of state coercion.⁵⁷

To summarize my position here, there are four points. First, the *madhabs* are very loosely connected institutions that do not meet the criteria of guilds or corporate groups. Although I clearly admit that there are some corporate elements, there exist some resisting elements that keep *madhabs* from being completely corporate groups, or turn the sphere completely into organized corporate groups. The relationship of scholar to *madhab* is much looser still and is more imagined than it is formal. Although there have been more formal bodies in the past (meaning not *madhabs* but more formal institutions within particular geographic regions that constituted independent establishments), they have not encompassed all jurists nor do they explain the locus of juristic authority.⁵⁸ Different *madhabs* and schools never constituted a single comprehensive corporate group that qualified for representing the community as a whole. Second, and perhaps most importantly, all this casting about to describe juristic authority as either corporate group via *madhab* or via some other formal

⁵² HOEXTER MIRIAM et al., *The Public Sphere in Muslim Societies*, Suny Press 2002, at 21.

⁵³ HOEXTER, *supra* n. 52, at 123.

⁵⁴ EPHRAT, *supra* n. 2, at 6.

⁵⁵ EICKELMAN DALE, and others., *Muslim Politics*, Princeton University Press 2004, at 131. ZEGHAL, *supra* n. 14, at 372.

⁵⁶ HALLAQ WAEL, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament*, Columbia University Press 2014, at 153-4.

⁵⁷ It is worth reading the analysis by MUHAMMAD ZAMAN of the fragmentation of authority when he says, Throughout the Muslim-majority world, advancing levels of education, greater ease of travel, and the rise of new communications media have contributed to the emergence of a public sphere— some call it the “street”—in which large numbers of people, and not just an educated, political, and economic elite, want a say in political and religious issues. The result has been increasing challenges to authoritarianism and fragmentation of authority. ZAMAN, *supra* n. 14, at ix.

On the other hand, in RAHEMTULLA'S estimation, the fragmentation of *ulama* left room for jihadists and extremists. In fact, it is the other way around. Fragmentation would protect the disagreements and diversity of opinions—the celebrated principles of jurisprudence. These fragmented individuals as a whole would dismiss the unidirectional discourse adopted by extremists and jihadists. Disagreements may allow for untraditional opinions or unorthodox discourse as well as a dangerous and extreme rhetoric but within the free sphere that by its nature dismiss the direct politics that is central to jihadists' discourse. Moreover, the fragmentation protects from state control as well meaning provides legitimacy. Formalization of *ulama* and associating them with the state official institutions strip them from legitimacy, which leaves room for jihadists and extremists. Furthermore, going against the very nature of scholars does not fight extremism; rather, it helps extremists gain ground and free them to develop social networks that the official scholars lack. RAHEMTULLA, *supra* n. 14, at 34.

⁵⁸ Tunisia appears to be an example when al-Fasi and others popularly acted without being affiliated to the establishment or its institutions. He was dismissed from al-Zitouna, he resumed his teaching in the mosque. KEDDIE, *supra* n. 2, at 77.

institution seems to presuppose a need to have such a formality and organization to exert political influence, and that is just wrong, as the next section shows.

3. The Dispersed Influence

The issue that occupies the debate of corporate group is whether the fractured Islamic jurists and scholars could constitute organized and formal institutions—either through “corporate groups” or through their affiliation to the *madhab* or other corporate, solidarity or pressure groups. If they succeed in establishing such group solidarity, was this group status powerful enough to dominate the jurisprudential activities. Similar to the debate on “religious institution,” the discussion of corporate group seems to have been premised on the idea that a corporate group is what assures the existence, leverage, and powerful sociopolitical influence of the community of jurists. Even when scholars agree with the existence of guilds, they tend to either point out the lack of overall corporate organization or the incapacity of the religious institutions to act as a concentrated group, thereby diluting their influence and rendering them largely marginal or irrelevant. It seems, for this approach, like if domination of corporate nature is what brings influence and strength.⁵⁹

What really seems to be missing from the argument is whether the overall comprehensive corporate group idea does any good to scholars as a community. Discussion on this is not completely absent in the literature, but it is comparatively rare.⁶⁰ Arguments concerning corporate groups (or the lack thereof) as formal institutions should be turned on their head since most of these arguments fail to recognize the very nature of the *ulama*. The *ulama*’s basic principle of disagreement among themselves preserves the dispersed authority they represent.⁶¹ This is not to say that corporate groups of different sorts did not influence society, jurisprudence, or politics. However, it is important to turn the focus to a more salient but less studied feature of scholars and jurists: fragmentation. This feature highlights their strengths and their freedom more than references to institutions or specific groups does.

Hanbalis from the early existence during the time of the founder, Ibn Hanbal, appreciated the doctrine of disagreement (*khilaf*). When Ishaq bin Bahlul (d. 766) wrote a book on the different opinions of jurists cross-*madhabs*, he titled his book “the Disagreements.” When he presented it to Ibn Hanbal, the latter told him to title it “the flexibility” because jurisprudential disagreements serve the Muslim community by providing flexibility and different options for different conditions.⁶² Even within one Hanbali doctrine, Al-Khiraqi disagreed with al-Khallal in ninety questions.⁶³ Ibn Hanbal himself seems to have more than one doctrine and approach according to Ibn Abi Ya’la. Ibn Hamid tells the disagreement over whether Ibn Hanbal has two contradicting or different doctrines: old and new.⁶⁴

The followers of Ibn Hanbal continued the tradition of honoring disagreements. Al-Hasan al-Banna al-Baghdadi wrote a book reconciling the jurisprudence of al-Shafi’i and Ibn Hanbal to bring together

⁵⁹ HOEXTER, *supra* n. 52, at 123.

⁶⁰ See the brief discussion of some of the positive side non-corporate nature of *ulama*, ZEGHAL, *supra* n. 14, at 372; EPHRAT, *supra* n. 2, at 6; RAHEMTULLA, *supra* n. 14, at 17.

⁶¹ For the concept of disagreement (*khilaf*) see e.g. IBN TAYMIYYAH, *Raf’ al-Malam ‘an al-’Aemmah al-’Alam*, The General Presidency of Scholarly Research and Ifta 1992, at 8-35; ALJAWZEYYAH, *supra* n. 38, at 40-205.

⁶² IBN ABI YA’LA, *supra* n. 15, at 1:104.

⁶³ IBN ABI YA’LA, *supra* n. 15, at 2:64.

⁶⁴ IBN ABI YA’LA, *supra* n. 15, at 2:149.

the followers of the two schools.⁶⁵ One unique case of the Hanbalis is Abu al-Wafa' Ibn 'Aqeel (d. 1119).

Ibn Rajab tells that Ibn 'Aqeel's conduct resembles the early mystical (Sufi) school. According to Ibn Rajab, Ibn 'Aqeel studied every subject and science from their masters whether hadith, fiqh, poetry, Quran or its exegesis etc. Ibn 'Aqeel was proud that he learned from the best people in each subject. He walked with his teachers, sat with them, listened, and attended their lectures. Ibn 'Aqeel said about his life and learning, my father's side was a house of learning and education and they were [practicing] on the school of Abi Hanifah. I was following the resources of learning wherever they are, while some of my Hanbali friends wanted me to stick to Hanbali learning circles and Hanbali teachers. I would have missed a lot of learning had I listened to their advice. I would sit in Abu 'Ali al-Mansour's learning circle and he would bring me closer to him and present me to other students and authorize me to issue *fatwas* [Islamic response] despite the presence of older students and scholars. Nothing could take me from my beliefs and opinions, not a Sultan's blackmail nor a societal pressure. I was put in harm's way from both some of colleagues and from rulers. The colleagues campaigned against me to the degree of asking for my blood, while the rulers threatened with imprisonment and chase but I feared no one but Allah and loved nothing more than knowledge. Despite what I suffered and some of my colleagues's prejudice, I found that most of the students who follow Hanbali school exercise self-control, and most of their teachers act with temperance and cleanness.⁶⁶

Ibn 'Aqeel was a case of Hanbalis who sees that being an honest Hanbali means to surpass superficial jurisprudential borders, and to learn from anyone, and communicate with every *madhab* affiliate. While his conduct and approach brought him to be of the highest Hanbalis and jurist, he complained from some Hanbalis and others who targeted him just because he was an unorthodox Hanbali. Ibn Rajab commented on Ibn 'Aqeel's approach attributing the calamity that happened to Ibn 'Aqeel to the fact that he was attending learning circles of some Mu'tazalis, orientalistically called Rationalists, like Ibn al-Walled and Ibn al-Tabban, and read on them in theology and was influenced by that.⁶⁷ Also influenced by Sufism, Ibn 'Aqeel wrote an apologetic book for Mansour al-Hallaj (d. 922) and his theology but he later retracted it and admitted that al-Hallaj was wrong and that there was a consensus among scholars during al-Hallaj's time that the latter was wrong.⁶⁸ In the year of 1082, when a conflict erupted between Hanbalis and other *madhabs*, Ibn 'Aqeel distanced himself and focused more on teaching and, thus, he was saved. He once was on a debate, and when he was told that what he is arguing for is not consistent with the Hanbali school, he replied, "I have my own independent *ijtihad*."⁶⁹

The case of Ibn 'Aqeel is blatant that *ijtihad*, disagreement, and jurisprudential flexibility exist and defeat the generalization of corporate group that needs more solidarity than flexibility. Ibn 'Aqeel got his position as a leading Hanbali jurist in the eleventh century by caring less about affiliation and

⁶⁵ IBN RAJAB, *supra* n. 17, at 1:28.

⁶⁶ IBN RAJAB, *supra* n. 17, at 1:119-25.

⁶⁷ The Mu'tazili school is presented as the Islamic rationalists in the medieval Islam or the defenders of reason, see HOURANI GEORGE FADLO, *Islamic Rationalism: The Ethics of 'abd al-Jabbār*, Oxford University Press 1971, at 1-17; MARTIN RICHARD C. and others, *Defenders of Reason In Islam: Mu'tazilism from Medieval School to Modern Symbol*, Oneworld Publications Limited 1997, at 10.

⁶⁸ Mansour al-Hallaj was a famous mystical figure in Islam. He was executed because he preached and called for the doctrine of unity of existence. The doctrine means to unify humans and probably everything with God and, thus, considering everything to be God. See in general, MASSIGNON LOUIS, *The Passion of al-Hallaj: Mystic and Martyr of Islam*, Princeton University Press 1994, at 1-23.

⁶⁹ IBN RAJAB, *supra* n. 17, at 1:118-38.

focusing on the Hanbali knowledge and authority. While there are other cases of the opposite according to the opposing parties of Ibn 'Aqeel, both Ibn 'Aqeel and his enemies, exist in broader sphere that allowed them to compete and fight over authority more than being strictly institutionalized Hanabalīs. The dispersed influence of their jurisprudence is what matters at the end. As I discussed in the third section, this sphere of influence encompasses guild members and non-guild scholars, jurists related to the state and those acting outside of it. The most important aspect is that the *ulama* regardless of their loose or firm affiliation with formal or imagined schools act at some point as individuals who are responsible only to themselves and their authority.

III. Formations of the Scholar: The Role of *Ulama*

The first section of this article draws attention to the manner in which scholars and jurists operated as an imagined institution rather than a formal religious one. It also showed how scholars retained influence despite the absence of any all encompassing association or corporate group. In this section, I will present the role and basic functions of the Hanbali scholars and jurists.⁷⁰ The scholars' roles and modes range from being cooperative with the state, to semi-independent, to resistant and oppositional. Considering the traditional roles and formations of the scholar, I will finally address modern responses of *ulama* to the many calls for change in their traditional roles.

1. The Weapon of Speech

The depiction of Islamic scholars as having the "weapon of speech" is proudly used in Islamic jurisprudence.⁷¹ This image implies that their strength is not tangible or coercive like their political counterparts but rather moral and intellectual.⁷² In fact, this weapon of tongue and pen alike is often deemed in Islamic discourse to be more important than the influence of political actors themselves. When Abdul-Rahman al-Jabarti, classified the categories of Muslim society, he placed the scholars in the second ranking right after the prophets and before the rulers and kings.⁷³ With this ranking, it is no wonder that the *ulama* say the pen is mightier than the sword.⁷⁴ As a result of this intangible weapon, they enjoyed privileges and exercised influence on different aspects of society, in a manner that could be more influential than those of political actors. This is demonstrated by the fact that, in addition to their own considerable funds from endowments and schools, they were exempted from taxation.⁷⁵

2. The Essential Functions

⁷⁰ It is not my intention to lay down all roles and functions of scholars and jurists nor to cover Islamic history but to focus on roles and modes related to the issue of their relationship to the state, constitutional order, or the ruler in a way that adds and helps our understanding of the issue.

⁷¹ In his long biographies of the scholars, AL-DHAHABI narrated a story about Ibn Hazim, a famous jurist from Andalusia, likening his tongue to the sword of al-Hajjaj, a bloody ruler in Islamic history. The comparison invokes the soft power of knowledge vis-à-vis the hard power of force and direct politics. AL-DHAHABI SHAMS AL-DEEN, *Sear A'lam al-Nubla'*, Al-Risalah Publisher 2001, at 18:199.

⁷² See HATINA, *supra* n. 9, at 209.

⁷³ ABDUL-RAHMAN AL-JABARTI, 'Aja'ib al-Aathar, Dar al-Kutub al-Arabiyyah 1998 (Abdul-Raaheem Abdul-Raheem ed.), at 1:14-5.

⁷⁴ KEDDIE, *supra* n. 2, at 150. In his book, *al-Fikr al-Usuli* (the Jurisprudential Thought), ABDUL-MAJEED AL-SAGHEER brilliantly and somewhat overly presented the literature and acts of *ulama* as a production of the persistent and continuous conflict between scholars and rulers, or may be between religion and politics. AL-SAGHEER ABDUL-MAJEED, *Al-Fikr Al-Asuli*, Dar al-Muntakhab al-'Arabi 1994, at 7-19. However, I interpret the same struggle as continuous attempts of scholars to protect the sphere that maintains their freedom of debate and interpretations and, most of the time, not over direct power.

⁷⁵ KEDDIE, *supra* n. 2, at 133.

One central function and role of scholars is to bear, carry and interpret the principles of Islamic law. To teach the rules and principles of Islam and to call upon society to act according to them are essential functions of *ulama* as well. As a result of these roles, they are often called to administer Islamic law as well, which itself then becomes an additional, fundamental role.⁷⁶ The types of roles and functions of *ulama* and jurists conform to their typical interactions with people because Islamic law itself is the texts interpreted within the circumstances and environment of a given society at a given time.

In addition to their basic functions, or perhaps because of them, scholars are seen as “guardians of faith,” “protectors of the religion,” or “bearers of Islam.”⁷⁷ Although this is arguably true, they have these roles due to their sociopolitical influence more than because of the exercise of any sort of direct power. From this perspective and more accurately, scholars are the bearers of knowledge and jurisprudence, as well as the protectors of the faith and religion of the people and the nation (*ummah*).

Scholars are therefore the most vocal demonstration of the nation’s fundamental religious duties.⁷⁸ As Hoexter indicates: “From the early Islamic times, the *ummah* (nation), not the ruler was bearer and interpreter of the norm and basic values of the proper Islamic social order. The ruler was responsible for the implementation of the rules.”⁷⁹ Within the nation, scholars are the group most associated with the work of defending and protecting the Islamic doctrine that defines it.

3. The Authority Holders

As indicated above, because Islamic law is a jurist’s law, jurists carry the authority that sustains it.⁸⁰ Exercising the authority is not facilitated only through controlling Islamic texts and traditions, but also by controlling the taxes and endowments. Hanbalis and other jurists try to set out basic qualities for anyone to be a jurist. Ibn Hanbal said about himself that he spent five years in the subject of menstruation and its jurisprudence until he understood it.⁸¹ He, then, said that nobody can present himself for jurisprudential ruling as a *mufti* until he acquire certain qualities: good faith and intention, patience, quietness, tranquility, being well-versed in his subjects, adequacy, and knowing people.⁸² Therefore, Ibn Hanbal did not forget the importance of interacting with people, learning them and leaning on them. In this sense, scholars are the legitimacy givers who, in turn, lean on people for credibility and support.⁸³ I put emphasis on the jurists’ role regarding authority because locating this authority takes on a greater importance in the course of deciding the sphere in which the *ulama* work.

If we to apply the claim-versus-belief formula developed by Ricoeur,⁸⁴ the self-proclaimed authoritativeness of *ulama* can be examined in people’s reaction and support of what can be called these meta-constitutional authority, an authority developed in a space beyond mere constitutional

⁷⁶ See ALJAWZEYAH, *supra* n. 38. Al-Baghdadi al-Khateeb, Al-Faqeeh Wal Mutafaqqeh. 2007. See also KEDDIE, *supra* n. 2, at 33-152.

⁷⁷ KEDDIE, *supra* n. 2, at 115.

⁷⁸ See FELDMAN NOAH, *The Fall and Rise of Islamic State*, Princeton University Press 2008, at 10-14.

⁷⁹ HOEXTER, *supra* n. 52, at 123.

⁸⁰ HALLAQ WAEL, Juristic authority vs. state power: the legal crises of modern Islam, 19 *Journal of law and religion* (2004), at 248; KEDDIE, *supra* n. 2, at 308.

⁸¹ IBN ABI YA'LA, *supra* n. 15, at 1:250.

⁸² HALLAQ, *supra* n. 80, at 245-7.

⁸³ KEDDIE, *supra* n. 2, at 115.

⁸⁴ TAYLOR GOERGE, *Paul Ricoeur and the Task of Political Philosophy*, Lexington 2012, at 66-67; RICOEUR PAUL, *Lectures on Ideology and Utopia*, Columbia University Press 1986, at 202-203. For Weber’s original idea about the claims of authority, see WEBER MAX, *On Charisma and Institution Building*, University of Chicago Press 1968, at 46-47.

framework. Throughout Islamic history, the mere existence of *ulama*'s meta-constitutionalism indicates the belief and trust of people in this authority. The following pages will try to review the main political modes of *ulama*, and how meta-constitutionalism existed in different forms within these imagined institutions.

IV. The Political Modes of Ulama

The literature on scholars and their political presence fluctuates reductively between portraying them as bureaucratic religious officials and mediators, or presenting them as mass leaders and prominent figures of opposition.⁸⁵ In fact, the political influence of scholars was quite significant, and can be divided into five main types, as discussed below. These are activism, mediation, consultation, counterbalance and withdrawal.

The analysis that presents scholars as government officials or state institutions as well as mediators and brokers between people and the state seems self-contradictory. Mediators are presumed not to be officially members of one party; otherwise, their mediation would be entirely compromised. Some researchers address this problem by describing different types or modes of scholars. They conclude that *ulama* are divided into two groups. One group is an official religious institution with members and functionaries, while the other is less reliant on the state and serves as a mediatory class that is always suspicious of the state.⁸⁶ Still others summarize responses of scholars toward political events as either being in total opposition or as passive withdrawal.⁸⁷

All of these accounts fall short of presenting other possible responses and fail to include other influential groups of scholars that were not considered, due to the reductionist approach in defining and dealing with Muslim scholars. Because *ulama* by their very nature are a dispersed authority, we should look at them as belonging to diverse groups in society, whether they were peripheral, *madhab* jurists as corporate group or otherwise, official state *ulama* or others unaffiliated with any formal institution. Due to their authority working mainly in a sphere that is (or at least in an ideal sense is supposed to be) uncontrollable even if they happen to work in the bureaucracy, *ulama* may resort to their own sphere if they are to issue fatwas or to work generally as scholars or jurisconsults.

I will present examples, focusing on pre-modern Hanbalis, of different modes of political engagement in order to prove the existence of a wider space available for different types of jurists and scholars—a space where they mainly acted as scholars but with vastly different capacities.

1. Outside Bureaucracy: Religious Activism

One prominent mode of scholars in regard to politics is their activism outside state institutions, or sometimes against them. I avoid simplifying their activism as “opposition” because in many cases it is not. Opposition in the contemporary state system means being able or willing to replace the government, or it may mean the competition over direct political power. Other understandings of opposition presume the operation of a coherent group, which leads back to the debate about whether

⁸⁵ Researchers do this sometimes in a contradictory way. Many researchers swing back and forth between describing the role *ulama* played either as part of the government or as mediators and brokers between the government and people. See e.g. KEDDIE, *supra* n. 2, at 150, 153-165-172. 1972; Hatina, *supra* n. 9, at 58-74. 2010; EPHRAT, *supra* n. 2, at 113; JACKSON, *supra* n. 20, at 170; HOEXTER, *supra* n. 52, at 23.

⁸⁶ KEDDIE, *supra* n. 2, at 72-3.

⁸⁷ KEDDIE, *supra* n. 2, at 176.

the scholars are a corporate or pressure group.⁸⁸ In all these situations, scholars cannot be described as simply a form of opposition. Therefore, I use “activism,” following Aziz Ahmed and others, to generally describe the scholars’ actions outside the state’s official sphere.⁸⁹ The illustrations here are just examples of the long and diverse activism of scholars. I present them to help demonstrate the role of *ulama* in politics as independent moral watchdogs. Rebellion, public pressure and protests are examples of the forms that scholastic activism could take.⁹⁰ In his book about the relationship between *ulama* and rulers, Abdul-Aziz al-Badri presents countless cases and names of scholars in Islamic history that “stood” in front of the rulers and challenged the government, and thus, they paid a toll with persecution, pressure, imprisonment or even execution.⁹¹

A silent repeated move among Hanbalis, and probably scholars in general, is to resort to the mosque and to teach in learning circles instead of institutions endowed by political elites. This happens as a juristic defiance to the political ban and to the outside attempts to control scholars. Ibn Sam’un (d. 997) was a Hanbali preacher who took to the mosque to preach despite the ban on preaching from the ruler. He was brought to the ruler’s court and defended his position and found his way to convince the ruler.⁹² At the same period, another Hanbali preached the ruler and reminded him of the Islamic role of the jurists until the ruler wept out of emotions and allowed for such activities.⁹³ When Ibn Sam’un died in 997 and was buried in his home, the people of Damascus were outraged by the fact that he didn’t have a proper funeral so they dug his grave and took his body to the great mosque in the city, and a lot of people prayed on him and buried him. The funeral, then, was a popular message.⁹⁴ Hanbalis narrated to their founder Ibn Hanbal that he said, “our promised meetings are the day of funerals,” meaning that huge funerals that are attended by large number of people are the signs of strength and truth.⁹⁵

Ibn Rajab does not miss the chance to complement principled Hanbalis who never feared the rulers nor the people. He gives the example of Abdul-Khaliq Bin ‘Isa (d. 1077) who “always said the truth and never favored a person of position or influence. In the matters of Allah, he never shied away. He moved between five mosques and taught in them....”⁹⁶ He was “the final destination to travel for students of the school of Ibn Hnabal” and “was undisputedly leader of Hanblis in his time.” According to Ibn Rajab, Ibn ‘Isa “was appreciated by the ruler but also never took anything from the ruler in return for matters of this life.” This is why he built his reputation and popular strength to the extent that two subsequent rulers in Baghdad started their reign by going to the mosque and asking allegiance from Ibn ‘Isa.⁹⁷ In 1071, Hanbalis went to the Great Mosque close to the Palace of the ruler and requested to eliminate bars, investigate selling wines in the city, and fight corruption and corruptors. The Caliph ‘Adhud al-Dawlah responded positively.⁹⁸

⁸⁸ For the meaning of “opposition” in the contemporary context see BLONDEL JEAN, *Political Opposition in the Contemporary World, Government and Opposition* (1997), at 32.

⁸⁹ KEDDIE, *supra* n. 2, at 257.

⁹⁰ See RAHEMTULLA, *supra* n. 14, at 17.

⁹¹ ABDUL-AZIZ AL-BADRI, *Al-Islam Bain al-Ulama and al-Hukkam*, al-Maktabah al’ilmayyah n.d., at 129-244. (Ironically, the author himself ended up to be another case of these inquisitions of scholars; he was executed by Ahmed al-Bakr’s regime in Iraq in 1969).

⁹² IBN ABI YA’LA, *supra* n. 15, at 2:158.

⁹³ IBN ABI YA’LA, *supra* n. 15, at 2:159.

⁹⁴ IBN ABI YA’LA, *supra* n. 15, at 2:161.

⁹⁵ ISMAIL IBNUMAR IBN KATHIR, *al-Bidayah wa al-Nihayah*, Dar ‘alam Al-kutub 2003, at 10:342.

⁹⁶ IBN RAJAB, *supra* n. 17, at 1:12-5.

⁹⁷ IBN RAJAB, *supra* n. 17, at 1:12-5.

⁹⁸ IBN RAJAB, *supra* n. 17, at 1:12-5.

Later After the death of a Hanbali scholar, some Mu'tazili wanted to proselytize the sect of Mu'tazili but al-Shareef Abu Ja'far (d. 1077) rushed to the great mosque of al-Mansour and reestablished the Hanbali doctrine with the other scholars of the people of hadith. For Ibn Rajab, "this is when the people of the Tradition and Sunnah were happy. The Book of Tawheed was read there too. All who were present agreed to support the [traditional Hanbali] doctrine."⁹⁹

Around the year 1077 in Baghdad, the "calamity of Ibn al-Qushairi" took place. The basic facts are that Ibn al-Qushairi (d. 1120) accused Hanbalis of theological heresy. The accusation was that Hanbalis embody Allah and liken Him to human beings. Some influential scholars leaned toward al-Qushairi's accusation and believed it, and, then, al-Qushairi and others resorted to the ruler complaining against Hanbalis. When the students of al-Shareef Abu Ja'far, the representative of Hanbalis, learned that their teacher was targeted by the group of al-Qushairi, they assigned some of them to protect their teacher at the doorsteps of the mosque. When both groups met, it turned violent and one passerby was killed as a result of the chaos. Both parties wrote to different political rulers: the Caliph and the Minister. The latter brought the leader of both parties to stop involving violence and ordinary people in their doctrinal conflict. When they refused, the Minister wrote to the Caliph. The Caliph then ordered house arrest for al-Shareef and exile for al-Qushairi and this is when the calamity of Ibn al-Qushairi came to an end.¹⁰⁰

While the story itself does not technically present a case of activism, it shows how jurists respond to different actors of the society and how they interact with the rulers. More importantly, it shows again the persisting nature of the jurists to protect their juristic domain. They can defy politicians and expose themselves to danger, violence, and exile in order to draw a line that protects the jurisprudence of Ibn Hanbal and more the religion of Islam. For many Hanbalis and others, involving rulers in matters of jurisprudence could distort the doctrine and jeopardize the principle. This is why they refused to follow political favorite doctrines, and even to keep silent about other minor opinions that they held. Al-Harawi said that he was brought to be executed five times in order to just keep quiet, let alone to change his juristic opinions, but he refused and survived all times.¹⁰¹

In Egypt, the case of the scholar al-'izz bin Abdul-Salam (d. 1262) is a striking one. In Islamic history, he was given the title the "Sultan of the *Ulama*" in appreciation of his bold moves in addition to his scholastic books on jurisprudence and jurisprudential politics. He was imprisoned and persecuted because of his activism and outspokenness. When Ibn Abdul-Salam noticed the influence the slaves of the Sultan Ayyub gained, he became alarmed and tended to invalidate the transactions they would make, which angered them. The slaves, who would become rulers later, complained and drove a wedge between the Sultan and Ibn Abdul-Salam. This led to an extreme confrontation with the ruler, as a result of which Ibn Abdul-Salam packed and started leaving Cairo with people and nobles following him. This forced the ruler and ruling elites into a position where they had to accept his authority and judgment and urge him to stay in order to stabilize society.¹⁰² This example helps to demonstrate the power of the *ulama* when they choose the path of activism. Despite the fact that this scholar did not have a formal position or political office, he could influence politics through societal and popular pressure.

Activism could take many other forms as well. Scholars engaged in public affairs based on their understanding of the moral obligations and religious principles that they promoted. They pressured

⁹⁹ IBN RAJAB, *supra* n. 17, at 1:15.

¹⁰⁰ IBN RAJAB, *supra* n. 17, at 1:16-20.

¹⁰¹ IBN RAJAB, *supra* n. 17, at 1:145.

¹⁰² ALI AL-SALLABI, Al-'izz bin Abdul-Salam, Al-Maktabah al-'Asriyyah n.d., at 65-66.

rulers as they did in the example of “Salat al-Raghaib” during the Ayyubid period (from the twelfth to the thirteenth centuries). Salat al-Raghaib is the prayer performed on the first Friday of the month of Rajab. The scholars opposed the general practice of this prayer on the grounds that it is an innovative religious practice. The ruler responded to their demands accordingly.¹⁰³ During the eleventh century, jurists gathered to protest against drinking wine, charging interest, and allowing prostitution. This protest is an important sign of the relationship between these protesting jurists and the state.¹⁰⁴

Not only pre-modern scholars protested or challenged orders that threatened their own morals or interests, but also some early modern scholars took the lead in defending the interests of the general public. Activist *ulama* were not only a Hanbali feature, but a mode that many other *ulama* exercised. In 1794, in Egypt after the Mamluk, the rulers of Egypt, introduced taxes on goods, the scholars fiercely opposed taxation. They led a general strike against the ruler to stop tax exploitation and, in the end, the rulers negotiated with the *ulama* and the taxes were repealed.¹⁰⁵

Another kind of activism, and one that could mark the climax of *ulama*’s influence, was challenging the authority of existing rulers. They could morally, in the form of a fatwa, delegitimize one ruler in favor of another, as they did many times throughout history when they perceived the public interest better served by the challenger.¹⁰⁶ In this context, Umar Makram (d. 1822) is an important name. He graduated from al-Azhar and rose among the nobles and scholars of Egypt during the French colonization (1798-1801). The *ulama*, under the leadership of Umar Makram, organized a popular mobilization and recognized the challenger Muhammad Ali as the legitimate ruler of Egypt over the existing Wali. It was a moment when Egyptians chose their own government in 1807.¹⁰⁷ Not long after that, Umar Makram told Muhammad Ali himself that the people had the right to remove any unfit ruler.¹⁰⁸

Scholars’ activism of this sort has become particularly intense in the modern era, in the context of resisting colonization and occupation. The jurist Rawaq, dubbed “the Sheikh of the Blind”, led the first opposition against the French in Egypt. Beyond Rawaq, the *ulama*, in general, orchestrated the resistance movement.¹⁰⁹

The Urabi movement (1879-1882) was a popular mobilization that ended up fighting the British intervention in Egypt. The Urabi movement in Egypt was named after Ahmed Urabi, a popular soldier who decided to reject the unpopular policies of Tawfiq, the ruler of Egypt. Scholars proved to be a critical component of the movement he inspired. It is worth noting that the Urabi movement attracted diverse scholars from “both sides of the aisle,” from those described as conservatives like Illysh to those who were reformists like Muhammad Abduh.¹¹⁰ Illysh, Mansour al-Adawi, al-Haddad, and Salim al-Bishri were among the *ulama* who contributed to the Urabi revolution.¹¹¹ In 1879, al-Bakri with his friends and other scholars issued the “National Charter” to request a constitutional monarchy in 1879, but Khedive challenged the move and sent al-Bakri into exile.¹¹²

¹⁰³ HOEXTER, *supra* n. 52, at 49.

¹⁰⁴ EPHRAT, *supra* n. 2, at 92.

¹⁰⁵ HATINA, *supra* n. 9, at 24.

¹⁰⁶ KEDDIE, *supra* n. 2, at 105-6.

¹⁰⁷ KEDDIE, *supra* n. 2, at 176..

¹⁰⁸ KEDDIE, *supra* n. 2, at 178.

¹⁰⁹ KEDDIE, *supra* n. 2, at 162-3.

¹¹⁰ HATINA, *supra* n. 9, at 39-44.

¹¹¹ HATINA, *supra* n. 9, at 35; KEDDIE, *supra* n. 2, at 163-4.

¹¹² KEDDIE, *supra* n. 2, at 164.

Later, a popular fatwa by *ulama*, signed by 10,000 people, delegitimized Taufeeq and called for a fight against the British occupation.¹¹³ Despite the official position of the Grand Mufti of al-Azhar, the majority of professors and students joined the revolutionaries against the Khedive Taufeeq, the contested ruler of Egypt who was supported by the British.¹¹⁴ Scholars who supported the Urabi movement paid an expensive toll as some were dismissed from al-Azhar, some were imprisoned like Illysh who was 80 years old, and others faced exile like Abduh.¹¹⁵

The Urabi movement inspired similar activism on the part of *ulama* in Morocco who opposed the monopoly of tobacco by the government of Hasan I (1873-1894) and who wanted to defend public interests against the alliance of big merchants and ruling elites. The scholars issued an opinion condemning the monopoly, which came as a shock to the King. The King addressed the issue and tried to calm the public.¹¹⁶

After the Urabi movement, al-Azhar participated in the 1919 revolt in Egypt. This revolution was led by Saad Zaghlul (d. 1927) who graduated from al-Azhar and was one of Muhammad Abduh's disciples. The movement broke out against the British occupation of Egypt and demanded national independence. The revolutionaries frequently met in the homes of the scholars.¹¹⁷ The movement was organized by the collective efforts of the national activists like Zaghlul and the other members of al-Wafd as a national delegation.¹¹⁸ The *ulama* generally contributed to the independence of Egypt by signing a petition to Britain that Egypt should be free and independent.¹¹⁹

The Activism of scholars was a traditional way in which *ulama* sought to challenge the status quo, and one that they embraced. Another manner in which they engaged the state was in the role of mediators and peace brokers, as the next section shows.

2. Mediation Role

It could be said that because jurists never occupied an official political position for their religiosity, they continued for a long time to mediate on behalf of the people with the political authorities in the state in order to voice the needs and interests of the people.¹²⁰ Ephrat thinks that *ulama* served as mediators because of the "heterogeneous character of their socioeconomic background and networks, and their close ties with the urban populace...."¹²¹

An interesting aspect of the scholars' role as mediators is that it serves a dual function. The first is defending the public and people's interests against the ruler's exploitation and overstep, and the second is being in charge of calming people down from the ruler's side. "*Ulama* served a communication tool between the ruler and the ruled for the ruler to manipulate the public."¹²² A perfect example of this occurred during the Urabi Revolution when the Khedive Taufeeq singled out *ulama* as responsible for public order and for ensuring the obedience of the people while these *ulama*

¹¹³ HATINA, *supra* n. 9, at 55.

¹¹⁴ HATINA, *supra* n. 9, at 70.

¹¹⁵ HATINA, *supra* n. 9, at 76-82.

¹¹⁶ KEDDIE, *supra* n. 2, at, 101.

¹¹⁷ HATINA, *supra* n. 9, at 142-3.

¹¹⁸ For more about the 1919 Revolution and the mobilization of Zaghlul and the Wafd see SELMA BOTMAN, *Egypt from Independence to Revolution, 1919-1952*, Syracuse University Press 1991, at 25-55.

¹¹⁹ HATINA, *supra* n. 9, at 143.

¹²⁰ HALLAQ, *supra* n. 56, at 56; EPHRAT, *supra* n. 2, at 13.

¹²¹ HOEXTER, *supra* n. 52, at 32.

¹²² KEDDIE, *supra* n. 2, at 53.

and others were carrying the people's demands to him.¹²³ Even at times of occupation and colonization, some *ulama* tended to work with the de facto rulers so they carried on in their role of representing people but to the colonizing forces this time. During the French occupation in Egypt, some *ulama* represented the public before the French, while other *ulama* represented the public against the French.¹²⁴

In order for *ulama* to resume their mediatory task, they need to be independent of the state's bureaucracy, as they cannot mediate if they work for one side and part (of the state); otherwise, they will lose the confidence of the public as faithful mediators.

3. The Consultation Role

One of the most famous judges (*qadis*) in Islamic history is the noted early Hanafi jurist Abu Yusuf (d. 798). His book about the land tax, *al-Kharaj*, is a jurisprudential hallmark. He started the book by saying, the "caliph instructed me to write a book for him to *study and act upon*."¹²⁵ The book, in other words, grew out of Abu Yusuf's role of consultant and enabled the Caliph to act upon the rules that Abu Yusuf set. The famous political jurisprudence theorist, al-Mawardi (d. 1058) is another example of a jurist who played the role of consultant when he wrote *al-Ahkam al-Shar'iyah*, which has proved to be one of the hallmarks in political jurisprudence. This work was prepared under the instruction of the ruler al-Qadir Billah (d. 1031) in order for him to "study and act upon" it.¹²⁶ Al-Juwaini (d. 1085),¹²⁷ and his student, al-Ghazali (d. 1111),¹²⁸ produced similar books to instruct future rulers on how to follow Islamic principles.

The custom of the ruler consulting scholars and scholars writing books or rulings of jurisprudence in response demonstrates how the consultation function worked between some scholars and rulers in Islamic history. The practice of consultation was not just a tradition established in the *ulama's* practice and literature, it was also a custom and principle on the rulers' part. Rulers like Nizam al-Mulk, a Seljuk ruler (d. 1092), advised rulers to consult learned scholars especially the experienced ones.¹²⁹ The objectives of scholars in their services as advisors were to maintain the cooperation and understanding of rulers, and thereby have influence in the implementation of Islamic principles that would in their judgment maximize the interests of the public while furthering their own longer-term interests and influence as well.¹³⁰

Around the 1100s, Abu Saad al-Baqqal al-Baghdadi was used to preach in the presence of the Caliph al-Mustadhir. He once preached Nizam al-Mulk that "Allah could turn his [fancy] wooden door into his casket.... Al-Baqqal added, addressing Nidham al-Mulk, you have no choice but to follow Allah's rules because you're the agent of the [Islamic] nation unlike ordinary individuals. [You are]

¹²³ HATINA, *supra* n. 9, at 53.

¹²⁴ KEDDIE, *supra* n. 2, at 173.

¹²⁵ AL-QADI ABU YUSUF, *Al-Kharaj*, Dar al-Ma'rifah 1979, at 3.(italics is mine, and translation is Nimrod Hurvitz') See HOEXTER, *supra* n. 52, at 20.

¹²⁶ AL-MAWARDI ABU AL-HASAN, *Al-Ahkam Al-Sultanyyah*, Dar Ibn Qutaibah 1989, at 1.

¹²⁷ AL-JWAINI ABU AL-MA'ALI, *Al-Ghyathi: Ghyath AlUmmam fi Eltyath AlDhulam*, Dar al-Da'uah 1980, at 1.

¹²⁸ AL-GHAZALI ABU HAMID, *Sirr al-'Almeen*, Dar al-Afaq 2001, at 1.(It is worth noting that this book's author is highly disputed whether was al-Ghazali or not).

¹²⁹ AL-MULK NIZAM/HUBERT DARKE, *The Book of Government; or, Rules for kings*, Yale University Press 1960, 95. Nizam al-Mulk says, "Holding consultations on affairs is a sign of sound judgment, high intelligence and foresight." See also EPHRAT, *supra* n. 2, at 63.

¹³⁰ KEDDIE, *supra* n. 2, at 177.

an agent who is responsible to take care of the interests of people and report to the higher political authority of this life, and to Allah in the Hereafter.¹³¹

This custom of playing the role of consultation was not exclusive for Hanbalis nor only in the medieval Islam. With the Ottoman Empire in the sixteenth century, scholars and sultans reached an important level of cooperation and consultation where *ulama* who played a large part in bringing what one scholar regards as “a major achievement of the Empire, namely the endowment of Islamic law, in its *Hanafi* form.”¹³² This role of consultant continued even during the codification when the traditional role of scholars within the state was at stake. The *ulama* who justified the change and facilitated the codification feared that if the change was adopted without their presence, it might have worsened their position as scholars. The attitude of some *ulama* to justify codification was, therefore, based on the fear that the entire process would take place without their input at all if they did not participate.¹³³ The effort in the end, however, delegitimized not just some of the scholars involved in the codification process but the state as well. The effort was seen as justifying late Ottoman tyranny and monopoly of power rather than as an effort to implement Islamic law.

Consultation worked in cases where the *ulama* consulted were associated in one way or another with the ruler, sultan, or government, such that the scholar acquired the confidence of the ruler. In the absence of such trust, it is unlikely that a jurist could have played this role effectively.

4. The Official Counterbalance

Despite partial subordination of ruler-friendly *ulama* to the people in power, these *ulama* were still able to function as an official counterbalance. According to Feldman, the compromise was that jurists offer legitimacy to the order as a realistic compromise for the acceptance of the status quo as a means of then exercising influence and using pressure to ensure Sharia compliance in society.¹³⁴ Feldman presents al-Ghazali and al-Mawardi as examples.¹³⁵ The move may be read, then, not as a scholarly concession to power, but as a brilliant maneuver that successfully preserved the law and the scholars in their constitutional position even after the caliphate had failed in its assigned task of preserving orderly government.¹³⁶

From the Hanbali jurisprudential history, Yahya bin Hubairah al-Wazeer (the Minister, d. 1165) represents probably the highest Hanbali official in the Abbasid state. Unlike al-Ghazali, and al-Mawardi and some others, Ibn Hubairah served in the government as a bureaucratic minister. According to Ibn Rajab, Ibn Hubairah was poor until he was brought to the Sultan's services and was promoted until he became a minister during the rule of al-Muqtafi li Amrillah. Ibn Hubairah was then praised a lot and was called different great titles by the people for his position and dedicated learning. However, he refused to be called the lord of ministers. He said that Allah calls Aaron a minister to Moses, and the Prophet called Jibreel and Mika'eel his ministers in the heavens while Abu Bakr and 'Omar are his ministers on earth. Thus, Ibn Hubairah wouldn't allow himself to be called the lord of these great people and angels who should be called lords themselves. When Ibn

¹³¹ IBN RAJAB, *supra* n. 17, at 1:90.

¹³² KEDDIE, *supra* n. 2, at 29.

¹³³ LAYISH AHARON, *Die Welt des Islams*, 2004, at 89-101.

¹³⁴ FELDMAN, *supra* n. 78, at 50-1, 38-9.

¹³⁵ I do not agree with analysis that al-Ghazali has a similar move to al-Mawardi. This is because al-Ghazali's authorship of the book, *Sirr al-'almeen*, is really disputed and I believe it is not his. See AL-DHAHABI, *supra* n. 71, at ' 19/328. In addition, this approach of being ruler-friendly does not fit the whole works and moves of al-Ghazali like his criticism of the association with sultans in his infamous book, ABU HAMID AL-GHAZALI, *Ihya' 'Ulum al-Deen*, Kiriata Futra n.d., at 66-8 § 1.

¹³⁶ FELDMAN, *supra* n. 78, at 39

Hubairah held the position of minister he brought closer to him the scholars, and best of people in learning circles and the people of worship. He benefitted the people of knowledge and Sunnah as best as he could, May Allah bring mercy upon him.¹³⁷

Ibn Hubairah once was in a learning debate with al-Ashtari al-Maliki, a jurist following the school of Malik, and al-Ashtari attributed to Malik an opinion that is, in fact, not Malik's. Then, Ibn Hubairah tried to correct him but al-Ashtari insisted on that, until Ibn Hubairah brought the authoritative book from both resources, Malik and Ibn Hanbal, and won the argument. Following this incident, Ibn Hubairah asked al-Ashtari to apologize for the people of knowledge for claiming something that was not true but he refused. Then, Ibn Hubairah called him a name and cursed him. The next session, Ibn Hubairah started blaming himself for mistreating al-Ashtari and apologized for him, but al-Ashtari said he was the one who should apologize for telling a false fact. After that, a lot of people cried in the place and was emotional.

Ibn Rajab described Ibn Hubairah as a jurist who served the Abbasids but highly respected the juristic sphere and respected its rules and borders. Ibn Hubairah once was shown a book that was brought to him from the library of the *madrasa* of al-Nizamiyyah, but he refused to read it and ordered it to be brought back since the terms of the endowment of the library stated that "no book should be brought outside it." This was part of the Hanbali and other schools jurisprudential doctrine of "*shart al-waaqi'*" that the endowment must be run completely according to the terms of the endower.¹³⁸ During a learning circle in the mosque, Ibn Hubairah gave an example of how the terms of the endower should be respected. He said he once was not allowed to enter a *madrasa* because it was built exclusively for Shafi'is and he was Hanbali.¹³⁹

Although he served in the Abbasid government, Ibn Hubairah maintained reasonable neutrality towards jurisprudential orientations, and respected the juristic sphere regardless of *madhabs*. Despite the fact that he was a learned jurist trained and affiliated with the Hanbali *madhab*, he said that mosques must not be affiliated with any school or jurisprudence, because they're for Allah, like in the Quran "Mosques are not but for Allah."¹⁴⁰ Therefore, according to Ibn Hubairah, nobody can establish an exclusive mosque for some *madhab* or school within Islam because mosques must be open for all Muslims and serve all Muslims. He considers the act of specifying a mosque for a *madhab* or a jurisprudence as a bad innovation in Islam and against the verse of Quran that talks about "the Sacred Mosque, which We have made (open) to (all) men - equal is the dweller there and the visitor from the country."¹⁴¹ Ibn Hubairah did not serve as an official counterbalance *per se*, but he was more like a political protector of the juristic domain.

The official counterbalance seems to attempt to reach the same destination: protecting the free sphere of jurisprudence from the total political control. Samuel Eisenstadt described the relationship between ruler-friendly *ulama* and the rulers as a "tacit bargaining" that the *public* sphere is for the public, and that *ulama* are always free to operate in this arena.¹⁴² Ottoman *ulama* and modern Islamic scholars in the official counterbalance mode use their pressure to fight what they see as social and

¹³⁷ IBN RAJAB, *supra* n. 17, at 1:211-38.

¹³⁸ IBN RAJAB, *supra* n. 17, at 1: 215-20.

¹³⁹ IBN RAJAB, *supra* n. 17, at 1: 235.

¹⁴⁰ Quran (72:18).

¹⁴¹ Quran (22:25).

¹⁴² HOEXTER, *supra* n. 52, at 6-151. Compare the interesting analysis of Haider Hamoudi about different bargains that, sometimes, involved al-Najaf, religious institutions and scholars in the Iraqi constitutional context, HAMOUDI HAIDER ALA, *Negotiating in Civil Conflict: Constitutional Construction and Imperfect Bargaining in Iraq*, University of Chicago Press 2013, at 82,87,120,137-141.

economic injustices.¹⁴³ Official Ottoman *ulama* could even issue rulings that circumvented the Sultan's will and order.¹⁴⁴ When a university of sciences was open at the order of the Sultan Abdulmecid II in 1870s, Sheikh al-Islam Hasan Fehmi Efendi saw it as a rival to the traditional madrsa system so he issued a fatwa and campaigned against it and succeeded in closing it.¹⁴⁵

Because the rulers decided to engage *ulama* in their legitimation process, the rulers paid the toll of bending to the wind created by *ulama* and the society they represented. In this mutual-interest relationship, scholars developed their own jurisdiction and sphere and the state protected its own domain. So, the dispute sometimes seems to be over "whose jurisdiction should govern?" or "whose sphere is at stake?"

The role of scholars as a counterbalance is sometimes vague due to the fact that the degree of "legitimacy" the *ulama* offer is often unclear and therefore perceived to be unconditional. It seems that al-Mawardi and the others would occasionally offer a temporary de facto solution to a political crisis by approving a ruler, but that solution could introduce a worse crisis when it is later used to justify forever de facto rule. Moreover, the "compromise" that brings scholars under the umbrella of the government ends up stripping them from real influence including counterbalance, and costs them their own legitimacy in the eyes of the public whom they should represent.¹⁴⁶

5. The Time of Withdrawal?

A salient phenomenon that repeatedly appears when *ulama* react to political developments is what some describe as "withdrawal." Interestingly, analysts' definitions of withdrawal differ dramatically from complete silence, to denial of participation in the discussion, to denial of participation in official governance.¹⁴⁷ In this section, I tend to revisit the analysis of withdrawal in light of the fact that scholars are characterized by fragmentation, and they each have their own space of influence.

Some analysts like Jackson and Hatina tend to describe *ulama's* response to politics as quietist. Quietism describes the wide range of methods that defer direct political questions or disputes over direct power to politicians or ruling elites that are directly involved in politics.¹⁴⁸ In this sense, quietism means abandoning (direct) politics in order scholars to devote the time and effort to the religious or jurisprudential work and debates.

Some analysts who present some *ulama* as quietists do not take into consideration the factor of whether these scholars are official, government-friendly *ulama* or non-official. Quietism does certainly exist in scholarly response to politics, but the point here is that the scholars' quietism could be interpreted differently according to the locus that the scholar traditionally occupied.¹⁴⁹

If the literature that speaks of withdrawal does not interpret this move by *ulama* as a quietist approach toward public discussion, it will describe it as a method of avoiding troubles and adopting a passive reaction toward the serious issues in society.¹⁵⁰ However, although passive withdrawal

¹⁴³ HATINA, *supra* n. 9, at 18-9. See ZAMAN, *supra* n. 14, at 108.

¹⁴⁴ KEDDIE, *supra* n. 2, at 33.

¹⁴⁵ KEDDIE, *supra* n. 2, at 41.

¹⁴⁶ HATINA, *supra* n. 9, at 134.

¹⁴⁷ Compare the following materials, JACKSON, *supra* n. 20, at 70; KEDDIE, *supra* n. 2, at 117; HATINA, *supra* n. 9, at 18-58-9.

¹⁴⁸ JACKSON, *supra* n. 20, at 70; HATINA, *supra* n. 9, at 18-58-9.

¹⁴⁹ As an example of the analysis that does not make this differentiation see JACKSON, *supra* n. 20, at 70. Compare the Shi'i Semi-Quietism and Quietism in Hamoudi's work, HAMOUDI HAIDER ALA, Between Realism and Resistance: Shi'i Islam and the Contemporary Liberal State, *Journal of Islamic Law and Culture*, 111-8 (2009), at 11.

¹⁵⁰ JACKSON, *supra* n. 20, at 70; KEDDIE, *supra* n. 2, at 117; HATINA, *supra* n. 9, at 18/58-9.

happens, most of what is described as “withdrawal” seems to be a part of the scholars’ typical role of operating in their own sphere and refusing to give that up for direct political involvement. Unlike common conception of non-political moves as simply passive withdrawal, the non-political attitude of the *ulama* can be powerful due to the nature of their arena, networks and authority.

It could be part of the confusing analysis of withdrawal as quietism is that it presupposes the modern state’s setting where real influence is primarily through direct politics and the state’s institutions.¹⁵¹ Because the analysis seems to reduce influence to the one of state institutions in the modern context, they assume the same setting when analyzing medieval Islamic scholars.

Sherman Jackson, for instance, notes that medieval Islamic jurists ignored the question of the proper substantive political authority and dealt with procedural validity instead.¹⁵² He gives the example of Ibn Taymiyyah who “shifted the focus from the top to the bottom, people, and their relationship to the divine law.”¹⁵³ This was the shift from the issue “who should rule” to “how should they rule.”¹⁵⁴ In studying al-Qarafi, Jackson points to the fact that “while Qarafi was conspicuously silent about the chaos and mayhem between the Ayyubids and the Mamluks, he finds time to address indiscretions that occur at a slighter lower level.”¹⁵⁵

With respect to al-Qarafi’s method in constitutional debates, his approach emphasizes that, although Islamic law should govern some conflicts, these conflicts reside outside the *ulama*’s own “jurisdiction.” As a result, the *ulama* exercise restraint in matters that might provoke political forces to invade matters normally within their arena. In addition, they developed a realist technique of “procedural validity” that has allowed them to serve people’s and society’s needs even when essential legitimacy of the state is at stake. Therefore, when scholars exercise restraint from becoming involved in politics, this is not always passive withdrawal and quietism, but it could be to a means of protecting their legal domain, or protesting the current setting as well. The line between these positions is not always fixed, but it is important to analyze the motives of scholars by looking at their literature to include all these possible factors in the analysis.

Daniel Crecelius reads the *ulama*’s refusal to rule during colonization, for example, as the typical submissive role of *ulama* to engage with government and direct decision-making.¹⁵⁶ This evaluation reduces the “active role” to being one that exists only by means of direct political governance and rule in the state as we know it today. In my opinion, the *ulama*’s refusal to rule was a remarkably smart one because they resumed their typical role of representing people in refusing to participate in forces that occupied their land, culture and political life. *Ulama* stripped the system of the French of its legitimacy and retained the legitimacy for themselves by proving to be independent and uninterested in power. *Ulama*, actually, put the French in a difficult situation because the French needed someone local to rule so they (the French) could indirectly rule but *ulama* refused this deal.¹⁵⁷

¹⁵¹ See HALLAQ, *supra* n. 80, at 50-7.

¹⁵² JACKSON, *supra* n. 20, at XX.

¹⁵³ JACKSON, *supra* n. 20, at Xxii/70.

¹⁵⁴ JACKSON, *supra* n. 20, at 71. It is worth comparing the analysis of Carl Popper of the modern democratic shift of political question from “who rule” to “how”. POPPER KARL RAIMUND/BOSETTI GIANCARLO, *The Lesson of This Century: With Two Talks on Freedom and The Democratic State*, Psychology Press. 2000, at 9.

¹⁵⁵ JACKSON, *supra* n. 20, at XXii.

¹⁵⁶ KEDDIE, *supra* n. 2, at 174-6.

¹⁵⁷ KEDDIE, *supra* n. 2, at 71. It is fair to say that there are times and many cases of *ulama*’s legitimizing absolute tyranny with no return for the public interests but this is mostly considered a corrupt move more than a typical pattern acceptable of *ulama*.

There may be some element of passive withdrawal and quietism on the part of some *ulama* in certain contexts. However, Jackson ignores the fact that *ulama* can protest by withdrawal, which is powerful in light of the tools of legitimacy that they have.

Thus, in the end, refusing to serve in politics is not merely withdrawal; it could also signal a powerful active reaction of protesting the status quo. In the case of scholars, it is even stronger when we know that the public could see their absence from the state as an attempt at delegitimization of the state. In addition, “withdrawal” could be a stand itself as it builds a space that is stronger and more attached to the people—an entirely different authority that the state does not control.¹⁵⁸ It is fair to suggest that the way and the kind of withdrawal must be analyzed to interpret this move.

In wars between two or more powers, scholars’ refraining from engagement is not always withdrawal as some may suggest,¹⁵⁹ but rather a means of maintaining their role no matter which wins. For example, in the war between Ottomans and Mamluks, the scholar Arusi argued that his goal was the welfare of Muslim subjects, not the victory of either the Ottomans or the Mamluk.¹⁶⁰

When some scholars resort to their very locus to exercise influence, some commentators interpret this move as a kind of withdrawal. In explaining what some regard as a quietist approach, Hallaq hints at the separation of the legal and the political in medieval Islam.¹⁶¹ It is actually more of a revealing feature of the locus that the jurists and scholars work in rather than passively accepting the status quo.

At any rate, whether withdrawal existed as much as some claim or not, this mode of withdrawal is one mode that scholars assume while they can and do assume other modes at other times. Sometimes, even when some *ulama* adopt one mode toward politics, other *ulama* adopt another mode. This is why, for example, we saw these different reactions toward one issue, one party, or government.

In the following section, I will discuss the example of westernization that threatens the traditional role of modern scholars, and how they have reacted to it.

¹⁵⁸ This explains why the Saudi government, for example, takes popularity of “peripheral” *ulama* and jurists very seriously and may even imprison a popular scholar for being popular or prevent him from having regular learning circles. This is because this popularity builds a bigger space for a sphere that widens the scope of the influence of this out-of-the-state authority. In the course of building this authority, jurists could use an Islamic maxim of “multiplying the number of Muslims.” By this, jurists mean that even those who are not dedicated to a specific moral Islamic task (not jurists or dedicated students) can come and listen. The exercise of multiplying the numbers of people surrounding the learning circle and *ulama* functions to build a social support in the space where these jurists reside and exercise their influence.

¹⁵⁹ HATINA, *supra* n. 9, at 24.

¹⁶⁰ HATINA, *supra* n. 9, at 24.

¹⁶¹ HALLAQ, *supra* n. 80, at 251

V. The Modern Mode: in the Course of “Change”: Between Reform and Westernization

1. The *Ulama* and Legal Change

When we discuss the roles of scholars and pre-modern Hanbali jurists and how these roles have shaped their domain, the response to change is fundamental. It becomes even more important when we see that the change could enhance the functions of scholars, and could, on the other hand, marginalize their influence and role. In this section, I will discuss how modern scholars reacted to the calls for change in their juristic domain.

There are different approaches toward evaluating the importance of the role of scholars in the course of change in Muslim societies. One approach assumes that meaningful change comes from the westernized elites. Under this approach, scholars are not just less relevant but somehow a potential obstacle toward a useful change that an Islamic society might need.¹⁶² Some authors complain that the orientalist scholarship on *ulama* portrays them as foreign, if not opposed, to change and reform and that the “premodern Islamic legal tradition is a highly rigid structure, defined in opposition to the social and political institutions of society.”¹⁶³ Another approach interprets the response of scholars as dependent on their interests and social position rather than their values and public interests. Therefore, scholars could pose a threat or lend support depending on how their interests as a group are protected.¹⁶⁴ A third approach tends to portray *ulama* as “custodians of change” as long as public interests and values are not at stake.¹⁶⁵

This chapter takes the position that, although scholars vary and assume different modes, they maintain a very significant role in advocating for change that appeals to the public. If they cannot enhance the common good, they at least work to lessen the inevitable wrongs. They call for some change while they struggle against others.

In his book of the rules of jurisconsult and *ifta'*, Ibn al-Qayyem (d. 1350), following a settled rule in Islamic jurisprudence, asserts that fatwas change according to the time, place, circumstances and customs.¹⁶⁶ This at least recognizes the possibilities of legal change. Other jurists have reached largely similar conclusions. Ibn Aabideen (d. 1836) authored a book that focuses on jurisprudential changes according to circumstances and environment.¹⁶⁷ Therefore, jurists respond to people of their time in order to reach the best implementation possible of Islamic law. This is why, for example, Ebussuud Efendi (d. 1574), one of the most important scholars in the sixteenth century, relaxed a fatwa on endowments in order to respond to people's needs.¹⁶⁸

With the modernization of our culture, we find reservations from scholars not on the principle of change, but rather on certain kinds of change, change that jeopardizes the values of people or threatens to invade the very free channels between people and scholars. This kind of change is

¹⁶² See KEDDIE, *supra* n. 2, at 136-9-145; HATINA, *supra* n. 9, at 33,83-138. Compare KEDDIE, *supra* n. 2, at 14.

¹⁶³ ZAMAN, *supra* n. 14, at 17.

¹⁶⁴ See KEDDIE, *supra* n. 2, at 107-191.

¹⁶⁵ ZAMAN, *supra* n. 14, at 17-9. See HATINA, *supra* n. 9, at 134; RAHEMTULLA, *supra* n. 14, at 84.

¹⁶⁶ ALJAWZEYYAH, *supra* n. 38, at 255 § 3.

¹⁶⁷ IBN 'AABIDEEN, Nashr Al-'Urf Fi Bina' Al-Ahkam 'Ala Al-'Urf, Sayyed 'illysh n.d., at 114-48 § 2. See ZAMAN, *supra* n. 14, at 19.

¹⁶⁸ HOEXTER, *supra* n. 52, at 73.

commonly described as “westernization.”¹⁶⁹ At the same time, scholars have embraced changes that elevated the quality of living and allowed for free interaction between people and scholars. “Some *ulama* did not encounter problems with dealings with modernity as they applied to public interest rule.”¹⁷⁰ Therefore, reforms that fulfilled the requirements of serving public interest, the *ulama* would support and adopt, but those that stood against public interest, they were committed to opposing.

Some debate revolves around whether certain aspects of modernization could be implicit mechanisms of colonization. This applies to ways of living, dress code, languages, cultures, and related matters. Thus, some scholars warned against Western-style brimmed hats, jackets, and trousers¹⁷¹ while others allowed them.¹⁷² Similar reactions were narrated about fatwas against coffee,¹⁷³ tea¹⁷⁴ and cigarettes¹⁷⁵ when they were attached to certain westernizing influences. The fatwas and rulings were relaxed on these issues when the *ulama* began to consider other aspects of those activities.

Yet scholars were not opposed to other changes. For example, while they initially expressed reservations about the modern press because it was thought to have threatened the sacred texts,¹⁷⁶ they started to embrace it once there arose the phenomenon of a “media mufti” who could use modern press to disseminate Islamic messaging.¹⁷⁷ Their position seems to be that, while technology is a blessing, using it in religious matters should be done carefully to protect against the distorting of the message of Islam.¹⁷⁸ As Daniel Crecelius puts it: “The transformation of Islamic society under the impact of the modernization has been the major concern of scholars interested in the modern history of Islam.”¹⁷⁹

In understanding the modern *ulama*’s responses to changes brought about by colonization and westernization, and the reasons for the strong opposition of the *ulama* to them, the Ottoman era “Tanzimat” reforms prove a particularly salient example. The Tanzimat represent a turning point in modern Muslim history when the Ottoman Empire adopted reforms that were broadly viewed as severely limiting the role of scholars. In reality, however, as the next section shows, the Tanzimat induced scholars to return to their original role and their traditional sphere—resorting to the people and operating in an independent and autonomous space.

Between 1839 and 1876, the Sultans of the Ottoman Empire introduced a package of political, administrative, legal and social reforms known as the Tanzimat.¹⁸⁰ In this section, I will discuss these reforms and their aftermath in the Muslim and Arab world, with a particular focus on Egypt, to show how these reforms affected scholars and their role.

¹⁶⁹ For example, *ulama* of Morocco supported local reforms but opposed the Protectorate. Only reforms that attempted to limit the influence of *ulama* in Morocco attracted the opposition of scholars. KEDDIE, *supra* n. 2, at 106-7.

¹⁷⁰ HATINA, *supra* n. 9, at 134.

¹⁷¹ HATINA, *supra* n. 9, at 83-6.

¹⁷² HATINA, *supra* n. 9, at 106.

¹⁷³ KEDDIE, *supra* n. 2, at 288.

¹⁷⁴ KEDDIE, *supra* n. 2, at 116.

¹⁷⁵ KEDDIE, *supra* n. 2, at 288.

¹⁷⁶ HATINA, *supra* n. 9, at 33.

¹⁷⁷ See MESSICK BRINKLEY, Media muftis: Radio fatwas (in: Yemen, Islamic Legal Interpretation: Muftis and Their Fatwas, Harvard University Press 1996 (David Powers and others eds.), at 310-20. See also, ZAMAN, *supra* n. 14, at 58.

¹⁷⁸ HATINA, *supra* n. 9, at 138.

¹⁷⁹ KEDDIE, *supra* n. 2, at 167.

¹⁸⁰ See CHAMBERS RICHARD, The Ottoman Ulema and the Tanzimat (in: Scholars, Saints, and Sufis: Muslim Religious Institutions in the Middle East Since 1500, University of California Press 1972), at 33-46.

2. The Tanzimat and its Aftermath

After a long period during which the *ulama* enjoyed autonomy, the *ulama* were placed pursuant to the Tanzimat under the control of the Sultan when he introduced the office of chief mufti (Sheikh al-Islam). Religious activities then came under the control of the state appointed mufti. Sultan Mahmud II (d. 1839) further made a distinction between the affairs of the state and the affairs of the *ulama*, a step that was followed by subordinating the affairs of the *ulama* to those of the state.¹⁸¹ The lesson of the Tanzimat is that these reforms jeopardized and actually infringed on scholars' autonomy, and the autonomy of people they represented. It was not surprising to see scholars opposing not only the Tanzimat themselves, but other changes as well that resembled the Tanzimat throughout the Muslim world.¹⁸²

A notable response to the Tanzimat came from a conservative base of scholars. The stance of these *ulama* was depicted as a passive and indifferent response in that they saw these reforms as "worldly matters."¹⁸³ Again, as we saw from the analysis of "withdrawal," this stand can also be seen as an active one, building social authority away from state affairs.

The boldest moves of the Tanzimat involved the intervention of executive authorities in law making. Sultan Mahmud provided the concept of "*adalat*/justice" to be a resource of law along with Sharia and administrative ordinances, frequently referred to as *Kanun* (ordinances).¹⁸⁴ A new council was formed so that the secular elites could make laws instead of Islamic jurists. In 1855, mixed courts were introduced. Within a few years (1840-1858), the Panel and then Land Codes were promulgated as well.¹⁸⁵

The culmination of these efforts was the creation of an Islamic Civil Code known as the Mejlle. Between 1869-76, a commission led by Ahmed Cevdet Pasha produced this massive 16-volume work, meant to be an Islamic equivalent of the Western Civil Code. The grand mufti firmly opposed this move, arguing that deciding Islamic law should be deferred to his office not a secular committee. Nonetheless, the official scholars did not oppose the Tanzimat in the hope that they could serve in the legal process.¹⁸⁶ By the end of Tanzimat period, *ulama* did not actually lend legitimacy to the state but slowly and gradually stripped themselves, and perhaps the state, of legitimacy by subordinating religious institutions to the government. One commentator describes the attempts of reform during the Tanzimat to be "on the right track until the removal of effective law-making scholars to the advantage of the codes."¹⁸⁷

The experience of Tanzimat inspired the "reformist" ruler in Egypt Muhammad Ali, and the year 1872 marked the beginning of modernization for *ulama* and for al-Azhar. The impact of "modernization" in Egypt led to centralizing the government and threatening people's values. Muhammad Ali did not challenge *ulama* in their religious institutions but, rather, he created another order that existed alongside and gradually changed the locus of focus and influence. It is not surprising that modernization for *ulama* meant a retreat not just from political influence but also from

¹⁸¹ CHAMBERS, *supra* n. 180, at 35-7.

¹⁸² CHAMBERS, *supra* n. 180, at 37.

¹⁸³ CHAMBERS, *supra* n. 180, at 41.

¹⁸⁴ CHAMBERS, *supra* n. 180, at 42. The "*adalat*" rule here resembles the English concept of "equity" with similar consequences. For the concept of equity in English and American law, see in general, HOFELD WESLEY NEWCOMB, *The Relations Between Equity and Law*, Michigan Law Review (1913); NEWMAN RALPH ABRAHAM, *Equity and Law: A Comparative Study*, Oceana Publications. 1961.

¹⁸⁵ CHAMBERS, *supra* n. 180, at 42-4.

¹⁸⁶ CHAMBERS, *supra* n. 180, at 44.

¹⁸⁷ FELDMAN, *supra* n. 78, at 7.

social prominence. Although neglected during later period of Muhammad Ali's rule, *ulama* still played an active role, however, through blocking some reformatory projects. All major "reforms" proposed by Muhammad Ali were undermined by the absolute refusal of the *ulama* and students to support them. They even used space that was allowed by the reform to block further reforms.¹⁸⁸ Daniel Crecelius rightly notes that, although sheikhs and students truly desired reforms, each reform proposed was associated with government interference, and thus they were committed to opposing those proposed by Muhammad Ali.¹⁸⁹

To conclude, *ulama* could be guardians of change, but only to the extent that such change does not threaten their principles and public interests as they view them. If they did see the change as threatening, as in the case of "Westernization," they would not hesitate to fight it vigorously.

VI. Conclusion

In this article, I presented the different roles and modes of scholars to reemphasize the different forms of engagement that scholars can assume. These were all possible because they probably transcend the traditional rigid positioning of religious institutions in the modern state. *Ulama* appeal to people and form their positions according to what they think are the best interests of the public, as well as the tradition they carry and seek to protect. Most religious movements and productions are not directly traceable to formally organized institutions and even when such institutions happened to exist, their function was usually unrelated to the religious work, or to religious intellectual activities as a whole, or in any case less relevant than the broader sphere of jurists. This sphere was discussed in the context of the clergy in the Sunni and Hanbali experience, where hierarchy and institutionalization were rarely operative. The article ended with the debate of whether *ulama*, namely the Hanbalis, represented a "corporate group." Different studies adopt different approaches to determine whether *ulama* and jurists have established the type of solidarity that would qualify them as a corporate group. However, I argue that, although many jurists were members of such corporate groups, not all of them were. The juristic sphere also encompassed many who were members neither of a corporate group nor even of a madhhab. This feature allowed jurists to protect their domain from both internal and external controls.

¹⁸⁸ KEDDIE, *supra* n. 2, at 183-204.

¹⁸⁹ KEDDIE, *supra* n. 2, at 204.